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Rules and Regulations

Federal Register
Vol. 65, No. 17
Wednesday, January 26, 2000

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–179–AD; Amendment 39–11531; AD 2000–02–13]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. This amendment also requires eventual installation of a system that will prevent such positioning of the power levers during flight. Such installation will terminate the requirement for installation of a placard. This amendment is prompted by reports of operation of the airplane with the power levers positioned below the flight idle stop during flight. The actions specified by this AD are intended to prevent such positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

EFFECTIVE DATE: March 1, 2000.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

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 all de Havilland Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on July 7, 1998 (63 FR 36619). That action proposed to require installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, that action proposed to require eventual installation of an FAA-approved system that would prevent such positioning of the power levers during flight. Installation of that system would eliminate the requirement for installation of the placard.

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

1. Support for the Proposal

One commenter supports the proposed rule.

2. Request to Withdraw the Proposal: No Unsafe Condition

Several commenters point out the following: No new incidents of beta during flight have been reported since 1996, and reports were from foreign operators. Since those previous reports, the AFM has been revised to prohibit positioning of the power levers below the flight idle stop (beta) during flight, and the pilot training syllabus on prohibition of beta during flight has been revised. The commenters further state that sufficient tactile, visual, and audio cues exist to advise the flightcrew if the propeller is in beta range. One commenter, the manufacturer, points out that the power lever triggers cannot be applied accidentally. Movement of the triggers requires purposeful ''reach and lift'' action to engage beta. Therefore, the manufacturer asserts that unintentional engagement of beta during flight cannot occur. Another commenter states that a mechanical system cannot preclude inappropriate operation; however, proper training of pilots can. These commenters conclude that, with the previously mentioned procedures already in place, the unsafe condition specified in the proposed rule does not exist.

The FAA does not concur that the subject unsafe condition does not exist in Model DHC–8 series airplanes. The FAA acknowledges that other safeguards currently in practice, such as AFM revisions and the revised pilot training syllabus, do provide certain tactile, visual, and audio cues. (See Comment 7 for related discussion on visual cues.) However, despite the implementation of those safeguards, the FAA has received reports of operation of the airplane with the power levers positioned below the flight idle stop during flight on de Havilland Model DHC–8 series airplanes. One report indicated that such operation resulted in significant engine damage. Therefore, the FAA considers that sufficient data exist to demonstrate that an unsafe condition exists on Model DHC–8 series airplanes. Further, the FAA has determined that positioning of the power levers below the flight idle stop could result in engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

3. Request to Withdraw the Proposal: Airplane Already Meets Intent of 14 CFR Part 25.1155

Several commenters state that the current design meets the requirements of part 25 of the Federal Aviation Regulations (14 CFR part 25.1155), and one other commenter asserts that the current design already goes beyond those requirements. One of the commenters points out that part 25 of the Federal Aviation Regulations (14 CFR part 25) only addresses unintentional or uninformed actions, and does not address intentional acts. Another commenter states that if the FAA is going beyond its statutory authority and being inconsistent in application of requirements without

providing justification, the commenter would view the proposed rule as arbitrary rulemaking.

The FAA does not concur that the AD should be withdrawn. The issuance of this AD is based on the finding that an unsafe condition exists or is likely to develop in this airplane series. The FAA points out that an airplane's type design is approved only after the FAA makes a determination that it complies with all applicable part 25 (14 CFR part 25) airworthiness requirements. In adopting and maintaining those requirements, the FAA has made the determination that they establish an appropriate level of safety. However, actual in-service experience (as well as other factors, such as manufacturers' fatigue testing, etc.) may reveal problems in an airplane or its components that were not envisioned or predictable at the time of type certification. When these problems create an unsafe condition, this means that the intent of the original level of safety is no longer being achieved. When actions or procedures have been identified that will positively correct the unsafe condition and restore the airplane to its original level of safety, an AD is the appropriate vehicle for mandating that such actions be accomplished.

4. Request to Withdraw the Proposal: Proposed Installation May Introduce an Unsafe Condition

Several commenters state that introduction of a beta lockout system will not provide any added safety benefit, and could actually cause an unsafe condition if the beta lockout system were to fail during landing. These commenters point out that failure of the lockout system to release may prevent the selection of propeller beta pitch angles (on the ground after landing) could, in fact, cause an over run, loss of control of the airplane during landing, or an accident. This commenter also states that with an ''override'' function, the flightcrew is required to perform an additional task to unlock the power levers so they can select ''Beta/Disking & Reverse.'' Another commenter states that installation of a mechanical lockout system would require an additional cockpit procedure and associated training. That commenter points out that such an additional cockpit procedure would contribute to the crew workload during the most critical phase of flight. Further, the commenter contends that the additional cockpit procedure could result in delay in placing the airplane in the desired configuration when required.

The FAA does not concur that the installation of a beta lockout system may introduce an unsafe condition. The FAA has already required retrofit of a similar lockout system on three other turbopropeller-powered airplane models. Further, several turboprop airplanes were designed and certified with beta lockout systems. Both the retrofit and the original designed lockout systems have been operating safely for close to ten years with no adverse landing or rollout service history. No change is required to the final rule as a result of these comments.

5. Request to Delay Issuance of the Final Rule

Two commenters state that the proposed rule is premature and inconsistent, and that any rulemaking effort should wait until the Aviation Rulemaking Advisory Committee (ARAC) submits its findings and recommendations regarding a change to the Federal Aviation Regulations. One of those commenters points out that ARAC is not expected to submit its recommendations to the FAA until July 31, 2001. That commenter contends that, until changes to part 25 of the Federal Aviation Regulations have been accomplished, the proposal is premature, and, at best, shows an inconsistency by the FAA as a result of arbitrary rulemaking without explanation. Another commenter requests that the FAA delay issuance of a rule pending a detailed safety study review of the current design, with the objective of determining if the Bombardier design proposal for a beta warning horn addresses the unsafe condition.

The FAA does not consider that delaying this action until after the release of the ARAC recommendation is warranted since sufficient technology currently exists to devise and install a beta lockout system. The purpose of the ARAC task is to determine whether changes to existing design standards are appropriate. These standards would be applicable only to future designs. In tasking ARAC on this subject, the FAA never intended that ARAC address issues relating to unsafe conditions found on previously certificated designs. Further, the FAA has determined that the warning horn is not sufficient to address the unsafe condition, and does not prevent moving the power lever into the beta range during flight.

6. Request to Revise Paragraph (b) of the Proposal

Several commenters request that the FAA require installation of a beta warning horn rather than the beta lockout modification required by paragraph (b) of the proposal. These commenters also point out that Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, did not determine that a beta lockout system was necessary. Those commenters question why the FAA has determined that installation of the beta lockout system is necessary when TCCA has not mandated such an installation. One commenter, the manufacturer, states that TCCA is planning to require mandatory installation of the beta warning horn, which would be substantially less expensive than installation of a beta lockout system, and would still provide an equivalent level of safety. Some commenters state that the description of the installation specified in paragraph (b) of the proposal is not sufficient to provide actual guidelines for the development of a beta lockout system. However, another commenter states that paragraph (b) of the proposal limits how operators can comply with the requirements.

Another commenter requests that specific training for prohibiting beta during in-flight be required instead of the beta lockout system. Additionally, another commenter states that the service experience of the Model DHC–8 series airplane does not distinguish itself in comparison to other airplane models considering the fact that crews of other types of airplanes could intentionally position the power lever in the beta range.

Other commenters state that a beta lockout system still wouldn't preclude intentional use of beta during flight because of the override function. The manufacturer states that the proposal implies that installation of a beta lockout system would preclude the pilot from being able to position the power lever below flight idle during flight. However, the manufacturer points out that with an override function, intentional positioning of the power levers below the flight idle stop during flight cannot be prevented. The manufacturer concludes, therefore, that the declared unsafe condition cannot be eliminated by the installation of a beta lockout system with an override function. The manufacturer asserts that, if it can be concluded that intentional positioning of power levers below flight idle stop during flight can only be deterred, the beta warning horn provides such deterrence. The manufacturer states that a beta warning horn provides a loud, easily identifiable aural warning, which would ''sound'' with any movement of the power levers

below the flight idle stop. The manufacturer further notes that TCCA has accepted the beta warning horn modification as an enhanced level of safety.

The FAA does not concur with the requests to revise the requirement specified in paragraph (b) of the final rule. The FAA acknowledges that additional airplane flight manual limitations and additional pilot training have enhanced the operational safety of the airplane. However, those actions have not proven to solve the long-term problem involving unsafe operation of other turbopropeller-powered airplanes with a similar throttle quadrant design and service histories involving unsafe operation. Despite the addition of those actions, reports of beta during flight continued.

Further, the FAA does not concur with the commenters' requests to require a beta warning horn in lieu of a beta lockout system. The FAA points out that it appears that certain actions taken by the flightcrew are reflexive, and, as such, the action of placing the power levers below flight idle during flight may not always be interrupted by the horn. Additional data indicate that if beta operation is attempted with a warning horn as the only safety system, it is possible that in the time it takes for the flightcrew to react and return the power levers to the flight range, an overspeed of the propeller could occur that might cause engine damage or failure, and consequent reduced controllability of the airplane. Further, the beta horn (even though distinctive) may be accompanied by an airplane overspeed warning horn, along with other warnings, which may be confusing to the flightcrew. The FAA points out that, in at least one previous accident caused by inflight beta uses on another turbpropeller-powered airplane, the pilot attempted to decelerate the airplane from an overspeed condition (airplane speed was initially above Vmo). In that case, the airspeed aural warning was already sounding at the time the inflight beta event occurred. The FAA notes that many transport category airplanes powered by turbopropeller engines are operated at or near Vmo during descent in order to maintain adequate Air Traffic Control (ATC) separation from the faster flying turbojet-powered airplanes. Therefore, the FAA considers that use of a beta warning horn could be preceded or accompanied by an airplane overspeed aural warning, and could result in confusion to the flightcrew. Although the FAA acknowledges that a beta warning horn should deter the pilot from using beta in flight, the horn does not physically keep the power levers from being placed in the beta mode during flight. As explained previously, several turbopropeller-powered airplanes were designed and certified with beta lockout systems, and the FAA has required retrofit of a similar lockout system on three other turbopropeller-powered airplane models. Both the original design lockout systems and the retrofit have been operating safely for close to ten years with acceptable landing or rollout service history.

In response to commenters that questioned why the FAA is requiring installation of a beta lockout system and TCCA has not, the FAA notes that, while the United States and Canada observe the provisions of the bilateral airworthiness agreement, it remains the responsibility of the FAA to monitor and maintain the continuing airworthiness of U.S-type certificated and -registered airplanes. The bilateral airworthiness agreement does not restrict the FAA from issuing AD's based upon its own finding of an unsafe condition, regardless of the decision relative to the same subject made by another airworthiness authority. The FAA has examined the reports of operation of the airplane with the power levers positioned below the flight idle stop during flight on Model DHC–8 series airplanes, has examined other available data, and has determined that an unsafe condition exists. Therefore, the FAA finds that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

In reponse to the commenter's statement that paragraph (b) of the proposed rule limits the ways operators can comply with the requirements, the FAA points out that the language specified in that paragraph is purposefully general in nature to allow for some flexibility by the operators in complying with the requirements of that paragraph. Further, the FAA also points out that paragraph (d) of the final rule also contains a provision for operators to request approval of an alternative method of compliance.

7. Requests to Revise Paragraph (c) of the Proposal

One commenter requests that the proposed allowance for Minimum Master Equipment List (MMEL) relief of two days, as specified in paragraph (c) of the proposal, be extended to three days. Another commenter, the manufacturer, states that, where a legitimate system failure has necessitated the use of the override system, operators should not be penalized with a mandatory maintenance action in order to dispatch the airplane. The manufacturer considers a lockout system to be a secondary non-essential system to the existing design, and, therefore, dispatching the airplane with a failed lockout system for a limited time would not jeopardize the safety of the airplane. The manufacturer further states that if a pilot chooses to use the override system just prior to touchdown during inclement weather (e.g., low visibility, contaminated runway), those conditions could be considered emergency situations. Use of an override system in such an emergency should not require maintenance action to return the airplane to dispatch configuration. For those reasons, the manufacturer requests that the proposed MMEL relief of two days be extended in accordance with criteria to be identified in the DHC–8 MMEL.

The FAA concurs that the MMEL relief specified in paragraph (c) of the proposal may be extended to three flight days. However, although use of the override system may be made available as a means to gain additional stopping performance in the event of a failed beta lockout system, the FAA does not consider low visibility or contaminated runway scenarios to constitute an emergency. Further, the override function is used only when a system failure or potentially inadequate ground/air logic is indicated while the airplane is on the ground. The FAA has determined that in those situations a maintenance action must be taken.

8. Request to Require Only the Placard Installation

One commenter contends that the only action that the FAA should require is the installation of a placard. The commenter asserts that adding the placard, in combination with the current pilot training curriculum, provides an adequate level of safety. The commenter further points out that only a placard is necessary for many other airplane models.

The FAA does not concur that installation of the placard should be the only requirement of this AD. The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by reliance upon visual cues such as placards. Such visual cues may not be providing the degree of safety assurance necessary for certain transport airplanes. This, coupled with a better understanding of the human factors associated with reliance upon visual cues, has led the FAA to consider placing less emphasis on such visual

cues and more emphasis on design improvements. The required installation of a beta lockout system is consistent with these considerations.

The FAA acknowledges that installing a placard is the only requirement for some transport airplanes. Those airplanes, however, do not have the same service experience as Model DHC–8 series airplanes. As explained in Comment 6, the FAA has required the installation of a beta lockout system on other airplane models that have similar service experiences to those of Model DHC–8 series airplanes.

9. Request to Extend the Compliance Time

One commenter, the manufacturer, requests that the compliance time for the installation of the beta lockout system be revised from one year to 2½ years. The manufacturer explains that a beta lockout design could be available within one year of being mandated, but cautions that a compliance time of 18 months after the design approval is necessary.

Two other commenters request that the compliance time be changed to two years to allow time for design approval and actual installation. One other commenter states that one year is not enough time, but does not suggest an alternative compliance time.

The FAA concurs that the compliance time to install the beta lockout system may be extended somewhat. The FAA has taken into consideration the complexity of accomplishing the installation of a beta lockout system and the time that will be needed to develop and approve a service bulletin, and has concluded that a two-year compliance time to install the beta lockout system may be established without adversely affecting safety. Paragraph (b) of the final rule has been revised accordingly.

10. Requests to Revise the Cost Estimate

One commenter, the manufacturer, considers the cost estimate provided in the proposal to be significantly lower than actual costs. The manufacturer states that it has information indicating that the lockout implementation on another airplane model is estimated at an average of $24,000 per airplane ($12,000 for parts and $12,000 for labor). The manufacturer points out that the proposal does not account for the potential loss of revenue incurred by airplane downtime for incorporation of the change. The manufacturer is concerned that the lower cost estimate of $17,800 in the proposal may be misleading to operators.

One commenter considers that the requirements of the proposal go beyond the current requirements for continued airworthiness; therefore, the costs that were disregarded in the proposal as necessary for ''maintaining a safe airplane'' should be attributed solely as a direct result of the AD and should be addressed as such. Another commenter requests an explanation as to why a complete cost-benefit analysis is unnecessary and redundant. That same commenter requests that the FAA provide a cost-benefit analysis before a determination is made to require actions that may be unnecessary for an airplane that is already safe.

Based on information provided by the manufacturer, the FAA concurs that the estimated cost for the installation of the beta lockout system should be adjusted, and has revised the final rule accordingly. However, the FAA does not concur that a cost-benefit analysis should be accomplished for this AD. As stated in the proposal, as a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

11. Request to Clarify Intent of the Proposed Rule

Several commenters request that an accurate description of the unsafe condition be provided. Other commenters request clarification as to whether the FAA is trying to prevent an unsafe condition that could be caused by unintentional pilot actions or by intentional pilot actions.

The FAA considers that an adequate description of the unsafe condition has already been presented in the Notice of Proposed Rulemaking (NPRM). The FAA has determined that operation of the airplane with power levers positioned below the flight idle stop during flight could result in engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane. Since the FAA has received reports of those types of incidents occurring on Model DHC–8 series airplanes, the FAA has determined that such an unsafe condition exists in those models.

Regardless of whether in-flight operation in beta resulted from intentional or unintentional pilot actions, the purpose of this AD is to prevent such operation. The FAA considers a requirement to install beta lockout to be the most effective means to achieve that objective.

12. Request to Ensure Consistent Requirements

One commenter points out that the design of the power lever system on Model DHC–8 series airplanes is different than that of other turbopropeller-powered airplanes that are addressed by AD's similar to the proposal. Several commenters assert that there seems to be different requirements for certain similar airplanes and similar requirements for different airplanes. The commenters request that the FAA ''level the playing field'' to ensure requirements are consistent for all airplane models.

The FAA acknowledges that there are different requirements for certain airplane models. As discussed previously, the requirements for different airplanes are based on certain aspects of design and service history of each different airplane model. Therefore, the FAA considers that the ''playing field is level'' in that the basic requirements for airplanes with similar design and service histories are equivalent.

13. Request for a Public Meeting

One commenter requests that a public meeting be held to discuss the proposed rule. The commenter states that the proposed beta lockout system will not improve safety. The commenter contends that since the manufacturer, operators, and TCCA do not support the proposal, a public meeting should be held to determine the most appropriate action.

The FAA does not concur that a public meeting is necessary to discuss the final rule. A Notice of Proposed Public Meeting was published in the **Federal Register**, and that meeting took place on June 11 and 12, 1996. Draft design criteria that the FAA was considering for use in evaluating a beta lockout system were included in that notice. The public meeting was held for the purpose of soliciting and reviewing information from the public on what type of FAA action would be appropriate to prevent future occurrences of inflight beta operation on all turbopropeller-powered airplanes. Further, a 90-day comment period was

specified in the NPRM to allow an adequate period of time for commenters to respond. The fact that the final rule has been revised in response to certain information supplied by the commenters demonstrates the success of this process. For those issues on which commenters continue to disagree with the FAA's conclusions, given the extensive public participation to date, it is unlikely that yet another public meeting would resolve the issues. Therefore, further delay of this AD is inappropriate.

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 185 de Havilland Model DHC–8–100, and –200, and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the installation of the placard, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the placard installation on U.S. operators is estimated to be $11,100, or $60 per airplane.

Since the manufacturer has not yet developed a specific system commensurate with the requirements of this AD, the FAA is unable to provide specific information as to the number of work hours or cost of parts that will be required to accomplish the installation. However, based on similar installations of such systems accomplished previously on other airplane models, the FAA can reasonably estimate that approximately 200 work hours per airplane will be necessary to accomplish the system installation. The FAA also estimates that required parts will cost approximately $12,000 per airplane. Based on these figures, the cost impact of the required system installation on U.S. operators is estimated to be $4,440,000, or $24,000 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, 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:

2000–02–13 de Havilland: Amendment 39–11531. Docket 98–NM–179–AD.

Applicability: All Model DHC–8–100, –200, and –300 series airplanes, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, install a placard in a prominent location on the instrument panel of the cockpit that states: ''Positioning of the power levers below the flight idle stop during flight is prohibited. Such positioning may lead to loss of airplane control, or may result in an engine overspeed condition and consequent loss of engine power.''

(b) Within 2 years after the effective date of this AD, install a system that would prevent positioning the power levers below the flight idle stop during flight, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Following accomplishment of that installation, the placard required by paragraph (a) of this AD may be removed.

(c) In the event that the system required by paragraph (b) of this AD malfunctions, or if the use of an override (if installed) is necessary, the airplane may be operated for three days to a location where required maintenance/repair can be performed, provided the system required by paragraph (b) of this AD has been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(f) This amendment becomes effective on March 1, 2000.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00– 1772 Filed 1–21–00; 11:20 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–69–AD; Amendment 39–11528; AD 2000–02–09]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta Model AB412 helicopters with certain rescue hoists installed. This action requires replacing the rescue hoist hook assembly retention pin (retention pin) and periodically inspecting the rescue hoist. This amendment is prompted by an incident in which a rescue hoist hook assembly separated from a helicopter due to a missing retention pin. The actions specified in this AD are intended to prevent separation of the rescue hoist hook assembly from the helicopter due to failure of the retention pin. Loss of the rescue hoist hook assembly could result in loss of the person on the rescue hoist. Also, with the loss of the weight of the hoist cable assembly, the rescue hoist cable could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade and subsequent loss of control of the helicopter.

DATES: Effective February 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–69–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, has notified the FAA that an unsafe condition may exist on Agusta AB412 helicopters with rescue hoist, part number (P/N) BL10300–60 or P/N BL10300–59, installed. The RAI advises that replacement of the retention pin and certain inspections must be accomplished in accordance with Agusta Service Bulletin 412–59, Revision A, dated May 18, 1998, to prevent loss of a rescue hoist hook assembly. Loss of the rescue hoist hook assembly could result in loss of the person on the rescue hoist. Also, with the loss of the weight of the hoist cable assembly, the rescue hoist cable could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade and subsequent loss of control of the helicopter.

The FAA has reviewed Agusta Service Bulletin 412–59, Revision A, dated May 18, 1998, which describes procedures for inspecting the rescue hoist and replacing the retention pin.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, 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.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model AB412 helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of the rescue hoist hook assembly from the helicopter due to failure of the retention pin. This AD requires, before further flight, replacing the retention pin, P/N BL2395, of the hook assembly, P/N S6150–61090–1, unless already accomplished. Thereafter, prior to each flight during which the rescue hoist will be operated, this AD requires:

- Inspecting the rescue hoist for oil leakage and proper electrical and mechanical connections.
- Inspecting the retention pin ring assembly for safety wire integrity;
- Inspecting the pin that is installed on the housing for absence of rotation between the housing and adapter; and
- Inspecting the rescue hoist hook to ensure it rotates freely relative to the housing (number 3 on Figure 1).

This AD also requires, at intervals not to exceed 25 hours time-in-service (TIS):

- Inspecting the rescue hoist attachment and support for cracks, wear, corrosion, damage, and security;
- Inspecting the rescue hoist cable for fraying, wear, and corrosion; and
- Inspecting the rescue hoist cable for proper routing through the guide rollers, pulley, and drum.
- Finally, this AD requires, at intervals not to exceed 12 calendar months:
- Inspecting the retention pin for scratches or deformations, and replacing the retention pin if scratches or deformations are found.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the safe operation of the rescue hoist. Therefore, the inspections are required prior to further flight, and this AD must be issued immediately.

None of the Agusta Model AB412 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 2.5 work hours to accomplish all of the corrective actions (replacing the retention pin and inspecting) initially, at an average labor rate of $60 per work hour. Required parts would cost $85. Based on these figures, the cost impact of this AD would be $235 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified

under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–69–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2000–02–09 Agusta: Amendment 39–11528. Docket No. 98–SW–69–AD.

Applicability: Model AB412 helicopters with rescue hoist, part number BL10300–60 or BL10300–59, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the rescue hoist hook assembly from the helicopter due failure of the rescue hoist hook assembly retention pin (retention pin), accomplish the following:

(a) Before further flight, replace the retention pin, part number (P/N) BL2395, of the rescue hoist hook assembly, P/N S6150–61090–1, as follows:

(1) Disconnect the helicopter battery and ensure the external electrical power is not connected.

(2) Remove the safety wire and remove and discard the retention pin. Retain the two washers, P/N AN960C816L, for reuse (Figure 1).

(3) Install a zero-hours time-in-service (TIS) retention pin, P/N BL2395, and the two washers, P/N AN960C816L, (Figure 1). Safety wire the retention pin to the hook assembly using safety wire, P/N MS 20995C32.

(b) Before further flight, and thereafter prior to each flight in which the rescue hoist will be operated:

(1) Inspect the rescue hoist for oil leakages and proper electrical and mechanical connections.

(2) Inspect the retention pin, P/N BL2395, of the ring assembly, P/N BL2441, for safety wire integrity.

(3) Inspect the pin, P/N NAS516C4–6 or P/N MS171524, installed on the housing, P/N BL1357–1, and verify the absence of any rotation between the housing and the adapter, P/N BL1355, (Figure 1).

(4) Inspect the rescue hoist hook to ensure it rotates freely relative to the housing (number 3 on Figure 1).

(5) Correct any discrepancies found in step (1), (2), (3), or (4).

(c) At intervals not to exceed 25 hours time-in-service (TIS), inspect the rescue hoist as follows:

(1) Inspect the attachment and support for cracks, wear, corrosion, damage, and security. Replace any parts that have cracks, wear, corrosion, or damage with an airworthy part.

(2) Inspect the cable for fraying, wear, and corrosion. If fraying, wear, or corrosion is found, replace the cable with an airworthy cable.

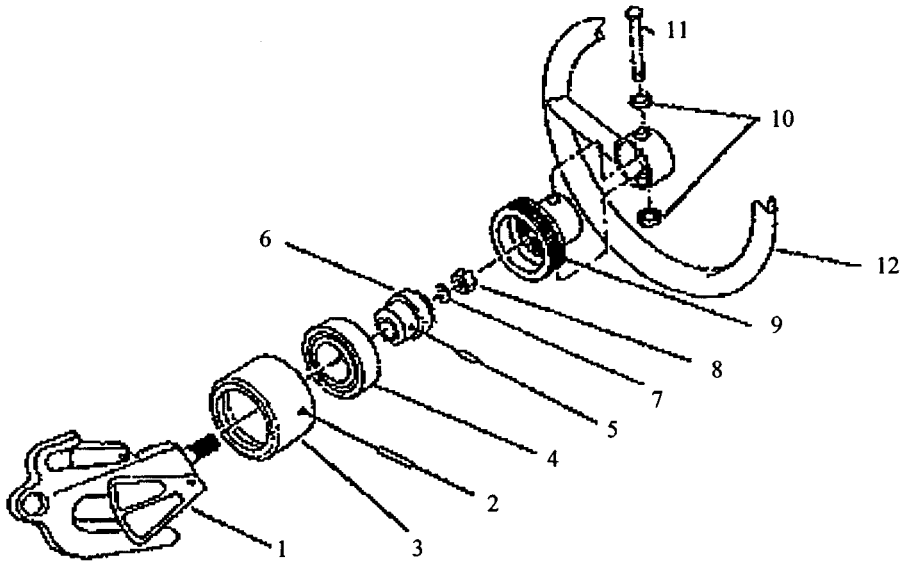
(3) Inspect the cable for proper routing through the guide rollers, pulley, and drum. Correct cable routing if necessary.

(d) At intervals not to exceed 12 calendar months, inspect the retention pin as follows:

(1) Referring to Figure 1, remove the safety wire and the retention pin. Retain the two washers, P/N AN960C816L, for re-use. Inspect the retention pin for scratches or deformations. If a scratch or deformation is found, replace the retention pin with an airworthy retention pin.

(2) Install the retention pin and the two washers, P/N AN960C816L, (Figure 1). Safety wire the retention pin to the hook assembly using safety wire, P/N MS20995C32.

BILLING CODE 4910–13–P



Hook Assembly S6150-61090-1

1	S6150-61522-2	Hook
2	NAS516C4-6 (alternative MS171524)	PIN
3	BL1357-1	Housing
4	BL1360	Bearing
5	BL1358	Pin
6	BL1356	Nut
7	AN960C816L	Washer
8	AN310C8	Nut
9	BL1355	Adapter
10	AN960C8	Washer
11	BL2395	Pin
12	BL2441	Ring Assembly

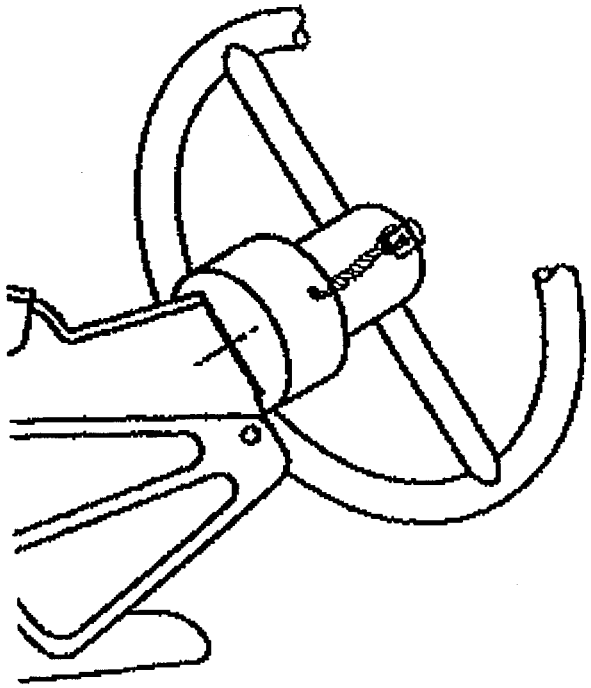


Figure 1

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

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

(f) This amendment becomes effective on February 10, 2000.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 98–186, dated May 26, 1998.

Issued in Fort Worth, Texas, on January 19, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–1770 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–27]

Amendment of Class D Airspace; Jacksonville Whitehouse NOLF, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the amendatory language of a final

rule that was published in the **Federal Register** on January 10, 2000, (65 FR 1309), Airspace Docket No. 99–ASO–27.

EFFECTIVE DATE: January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr10ja00–6, Airspace Docket No. 99–ASO–27, published on January 10, 2000, (65 FR 1309), amended Class D surface area airspace at Jacksonville Whitehouse NOLF, FL. An error was discovered in the amendatory language identifying the airspace description. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication for describing Jacksonville Whitehouse NOLF, FL, Class D surface area airspace at Jacksonville Whitehouse NOLF, FL, as published in the **Federal Register** on January 10, 2000, (65 FR 1309), (**Federal Register** Document DOCID: fr10ja00–6; page 1309), is corrected as follows:

Section 71.1 [Corrected]

* * * * *

ASO FL D Jacksonville Whitehouse NOLF, FL [Corrected]

By removing ''be effective during the specific dates and times established in advance by a Notice to''

* * * * *

Issued in College Park, Georgia, on January 10, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–1815 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–92]

Establishment of Class E Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule that establishes Class E airspace area at Burlington, VT (KBTV) to provide for adequate controlled airspace for aircraft executing instrument approaches to the Burlington International Airport at times when the Burlington Air Traffic Control Tower is closed. This action also corrects a typographical error in the docket number and changes the longitude and latitude of the Burlington International Airport to reflect North American Datum (NAD) 1983.

EFFECTIVE DATE: The direct final rule published at 64 FR 68008 is effective 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 6, 1999 (64 FR 68008). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 24, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

This direct final rule also corrects the docket number for this action to 99–ANE–92. The docket number used for the publication of the direct final rule was previously used for another airspace action. That other action, however, was issued from FAA Headquarters, while this action was issued from the New England Region. Therefore, the FAA has determined that the error in the docket number caused no confusion to interested persons wishing to comment on this proposal and corrects the docket number in this action.

Lastly, the longitude and latitude coordinates published in the direct final rule must be updated to reflect North American Datum (NAD) 1983. The FAA has determined that neither of these corrections expands the scope of the direct final rule.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the establishment of Class E airspace at Burlington, VT as published in the **Federal Register** on December 6, 1999 (64 FR 68008), **Federal Register** document 99–31518: page 68009, column 2; and the description in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.7; are corrected to read as follows:

Subpart E—Class E Airspace

* * * * **

Paragraph 6002—Class E Airspace Areas Designated as Extending Upward From the Surface of the Earth

* * * * **

ANE VT E2 Burlington, VT [New]

Burlington International Airport, VT (Lat. 44°28′23″ N, long. 73°09′01″ W.)

Within a 5-mile radius of Burlington International Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on January 13, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–1814 Filed 1–25–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N–0056]

RIN 0910–AA74

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to add certain labeling requirements for aluminum content in large volume parenterals (LVP's), small

volume parenterals (SVP's), and pharmacy bulk packages (PBP's) used in total parenteral nutrition (TPN). FDA is also specifying an upper limit of aluminum permitted in LVP's and requiring applicants to submit to FDA validated assay methods for determining aluminum content in parenteral drug products. The agency is adding these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially among premature neonates and patients with impaired kidney function.

DATES: This rule is effective January 26, 2001.

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: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA published a notice of intent in the **Federal Register** on May 21, 1990 (55 FR 20799) announcing FDA's concerns about toxic aluminum levels in TPN and requesting comments. As a result of the comments received, on January 5, 1998, FDA published a proposed rule in the **Federal Register** (63 FR 176) in which it proposed to: (1) Establish a maximum permissible level of aluminum in LVP's used in TPN therapy; (2) require that the maximum level of aluminum permitted in LVP's used in TPN therapy be stated on the package insert of all LVP's used in TPN therapy; (3) require that the maximum level of aluminum at expiry be stated on the immediate container label of SVP's and PBP's used in the preparation of TPN solutions; (4) require that the package insert of all LVP's and SVP's, including PBP's, contain a warning statement about aluminum toxicity in patients with impaired kidneys and neonates receiving TPN therapy; and (5) require that applicants and manufacturers develop validated assay methods for determining the aluminum content in parenteral drug products used in TPN therapy and submit the validated assay methods to FDA for approval.

FDA has become increasingly concerned about the aluminum content in parenteral drug products, which could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. FDA included specific references in the proposed rule that supported the following information about aluminum toxicity (63 FR 176). Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum. Many drug products used routinely for TPN may contain levels of aluminum sufficiently high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract and aluminum circulates, and it is deposited in human tissues.

Aluminum toxicity is difficult to identify in neonates because few reliable techniques are available to evaluate bone metabolism in premature neonates. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature neonates. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized.

Classic manifestations of aluminum intoxication in patients with impaired kidney function include fracturing osteomalacia, encephalopathy, and microcytic hypochromic anemia. Aluminum may prevent calcium absorption in premature neonates receiving TPN therapy. In addition, aluminum loading may be a factor in the bone disease of very ill neonates with reduced kidney function who have received long-term parenteral therapy with aluminum-contaminated fluids.

FDA received 21 comments on the proposed rule and addresses each of those comments in section III of this document. FDA is adopting this final rule as described below. The agency has also made minor edits to the final rule in response to the President's June 1, 1998, memorandum on plain language in Government writing.

II. Highlights of the Final Rule

FDA is implementing this final rule because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially premature neonates and patients with impaired kidney function.

The new regulations added to part 201 ((21 CFR 201) at § 201.323(a)) limit the aluminum content for all LVP's used in TPN therapy to 25 micrograms per liter (µg/L). This requirement applies to all LVP's used in TPN therapy, including, but not limited to, parenteral amino acid solutions, highly concentrated dextrose solutions, parenteral lipid emulsions, saline and electrolyte solutions, and sterile water for injection.

New § 201.323(b) requires the package insert for all LVP's used in TPN therapy to state that the drug product contains no more than 25 µg/L of aluminum. This statement must be included in the ''Precautions'' section of the labeling.

New § 201.323(c) requires the product's maximum level of aluminum at expiry to be stated on the immediate container label of SVP's and PBP's used in the preparation of TPN solutions. The statement on the immediate container label must read as follows: ''Contains no more than —— µg/L of aluminum.'' For those SVP's and PBP's that are lyophilized powders used in the preparation of TPN solutions, the maximum level of aluminum at expiry must be printed on the immediate container label as follows: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than —— µg/L.'' The maximum level of aluminum must be stated as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after January 26, 2001. The labeling requirement applies to all SVP's and PBP's used in the preparation of TPN solutions, including, but not limited to: Parenteral electrolyte solutions, such as calcium chloride, calcium gluceptate, calcium gluconate, magnesium sulfate, potassium acetate, potassium chloride, potassium phosphate, sodium acetate, sodium lactate, and sodium phosphate; multiple electrolyte additive solutions; parenteral multivitamin solutions; single-entity parenteral vitamin solutions, such as vitamin K injection, folic acid, cyanocobalamin, and thiamine; and trace mineral solutions, such as chromium, copper, iron, manganese, selenium, and zinc.

New § 201.323(d) requires the package insert for all LVP's, SVP's, and PBP's used in TPN to contain a warning statement. The warning statement must be included in the ''Warnings'' section of the labeling. The warning must contain the following language:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

Research indicates that patients with impaired kidney function, including premature neonates, who receive parenteral levels of aluminum at greater than 4 to 5 µg/kg/day accumulate aluminum at levels associated with central nervous system and bone toxicity. Tissue loading may occur at even lower rates of administration.

FDA removed the phrase ''intended for patients with impaired kidney function and for neonates receiving TPN therapy'' from the first sentence of § 201.323(d) because the phrase duplicated information contained in the actual warning and because the phrase made the first sentence of § 201.323(d) unclear.

New § 201.323(e) requires applicants and manufacturers to use validated assay methods to determine the aluminum content in parenteral drug products used in TPN therapy. The assay methods must comply with current good manufacturing practice regulations under part 211 (21 CFR part 211) (see § 211.194(a)). Holders of approved applications for LVP's, SVP's, and PBP's used in TPN therapy are required to submit a supplement to FDA under § 314.70(c) (21 CFR 314.70(c); see also 21 U.S.C. 356a(b)) describing the assay method used for determining the aluminum content. Applicants must submit the validation method used and the release data for several batches. In addition, manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections (see 21 CFR 211.160 and 211.180(c)).

New § 201.323 applies to all human drug LVP's, SVP's, and PBP's used in TPN. Licensed biological products are not covered by this rule.

III. Comments on the Proposed Rule

FDA received 21 comments on the proposed rule from professional associations, prescription drug manufacturers, Congress, individuals on TPN, and a hospital. Most comments supported the proposed limit for aluminum content in LVP's and the labeling requirement for SVP's and PBP's. Four comments suggested changes to the proposed warning statement. A summary of the comments received and the agency's responses follow.

A. Levels of Aluminum Content in LVP's

The agency stated in the proposed rule that it was considering setting an upper limit of 25 µg/L for LVP's used in TPN therapy. This requirement would apply to all LVP's used in TPN therapy, including, but not limited to, parenteral amino acid solutions, highly concentrated dextrose solutions, parenteral lipid emulsions, saline and electrolyte solutions, and sterile water for injection. The agency also proposed that the package insert for all LVP's used in TPN therapy state that the drug product contains no more than 25 µg/L.

1. Fifteen comments strongly supported a limit on aluminum of 25 µg/L. Two of the comments specifically supported the accompanying proposal that the package insert state that the drug product contains no more than 25 µg/L of aluminum.

FDA agrees that 25 µg/L of aluminum is a reasonable limit. As stated in the proposed rule, the 25 µg/L limit is feasible and necessary for the safe and effective use of LVP's used in TPN therapy.

Two comments, one from an LVP manufacturer and the other from a trade association, stated that 25 µg/L is not a reasonable limit for the varying reasons outlined in comments 2 through 8, in section III. A of this document.

2. These comments stated that data from production batches show potential rejections of finished batches at release if a limit of 25 µg/L is adopted. One of these comments specified that more than 10 percent of assay results exceed the proposed limit. It also stated that their current batch analysis showed a 95 percent confidence that at least 99 percent of the batch contained less than 50.37 µg/L of aluminum at release.

FDA understands that not all current batches of LVP's will meet a 25 µg/L level of aluminum. FDA will implement this rule 1 year after the date of publication to allow companies an opportunity to meet the specifications in this rule. FDA is not adopting a higher level because FDA believes a 25 µg/L level of aluminum is necessary to protect the public health.

3. The same two comments said that glass leaching over time increases aluminum levels so that initial levels cannot be established low enough to ensure batch acceptability by the end of the expiry period.

The intention of this rule is to reduce aluminum to an acceptable level in TPN products. A manufacturer can reduce toxicity by any of several routes, including using containers made of different materials.

4. One of these comments requested that FDA set the maximum level of aluminum using the procedure specified in the draft guidance entitled ''Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances'' (draft Q6A guidance) (62 FR 62890). This draft guidance states that a limit on impurities can be determined by (1) Determining the level at which the impurity is present in relevant batches and then (2) determining the mean plus upper confidence limit for the impurity where the upper confidence limit is three times the standard deviation of batch analysis data.

FDA is not using the procedures specified in the draft Q6A guidance because it is not appropriate to use current product aluminum levels to determine upper limits when the goal is to reduce aluminum levels to at or below the limit defined as safe. Further, the guidances entitled ''Q3A: Impurities in New Drug Substances,'' (January 1996) and ''Q3B Impurities in New Drug Products,'' (November 1997) address the issue of quantification of impurities. These guidances state that limits should be set no higher than the level that can be justified by safety data. The guidances also state that, for impurities known to be unusually potent or to produce toxic or unexpected pharmacological effects, the quantitation and detection limit of the analytical methods should be commensurate with the level at which the impurities must be controlled. FDA's primary concern in enacting this rule is ensuring the safety of the patient population and limiting exposure to the impurity. FDA has determined that the 25 µg/L limit is necessary for the safe and effective use of LVP's in TPN therapy.

5. These comments also stated that current assay methods cannot reliably distinguish between 25 µg/L and 30 µg/L. The comment did not provide supporting data or evaluation of the specific methods claimed to lack the required accuracy.

FDA understands that methods are currently available that are capable of detecting aluminum concentrations at 25 µg/L levels. In particular, FDA is aware that graphite furnace atomic absorption spectrometometry can be a sufficiently accurate validation method. However, FDA will accept any validated analytical method to assay aluminum content in TPN.

6. One of these comments suggested that FDA should require labeling of LVP's with an average and a range of aluminum values at expiry, obtained from five production scale batches, instead of requiring a limit of 25 µg/L

of aluminum in LVP's. The labeling would state ''Approximate average aluminum value— µg/L. Approximate aluminum range —— µg/L to — µg/L.'' The same comment requested that FDA apply the same labeling standards to LVP's, SVP's, and PBP's, under the rationale that some LVP's are identical in composition to PBP's.

FDA notes that if a manufacturer makes a PBP specifically for LVP use, the PBP should not contain more than 25 µg/L of aluminum so that the LVP manufactured from the PBP does not contain more than 25 µg/L of aluminum. FDA is implementing the 25 µg/L limit for LVP's rather than permitting an average or a range of aluminum levels to be stated for LVP's because the agency believes that it is more appropriate to set a maximum level due to the large volume of use of these products. FDA has determined that the 25 µg/L limit is necessary for the safe and effective use of LVP's used in TPN therapy. FDA's basis for not requiring SVP's and PBP's to be labeled with an average and a range of aluminum levels is discussed in response to comment 11 in section III. B of this document.

7. This same comment stated that establishing a 25 µg/L limit on LVP's would not have the desired effect of reducing aluminum levels in TPN because the majority of aluminum contamination is due to SVP's, not LVP's. A different comment requested that FDA narrow coverage of the rule to only those products that contribute significant amounts of aluminum to TPN: Calcium gluconate, calcium gluceptate, potassium phosphates, and sodium phosphates. The comment stated that calcium gluconate alone can contribute 88 percent of the total aluminum present in a TPN formulation.

FDA recognizes that numerous factors contribute to aluminum contamination in TPN therapy. Therefore, FDA is addressing the problem in several different ways in an effort to reduce aluminum contamination, rather than reducing aluminum from one source.

8. Another comment noted that the United States Pharmacopeia (USP) has limited aluminum levels in monographs for substances used in hemodialysis, including: Calcium acetate, calcium chloride, magnesium chloride, potassium chloride, sodium acetate, sodium bicarbonate, and sodium chloride. The comment stated that additional steps could be taken to limit aluminum levels in monographs of substances used in the manufacture of TPN solutions. Although FDA believes USP's limits add a valuable contribution to limiting aluminum contamination, FDA believes the additional measures set forth in this final rule are needed to prevent an unsafe level of aluminum in TPN.

B. Aluminum Levels in SVP's and PBP's

In the proposed rule, FDA proposed requiring that the maximum level of aluminum at expiry be stated on the immediate container label of SVP's and PBP's used in the preparation of TPN solutions. FDA proposed that the statement on the immediate container label read as follows: ''Contains no more than —— µg/L of aluminum.'' For those SVP's and PBP's that are lyophilized powders used in the preparation of TPN solutions, FDA proposed that the maximum level of aluminum at expiry be printed on the immediate container label as follows: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than—— µg/L.'' FDA proposed that the maximum level of aluminum must be expressed as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches; or (3) the maximum historical level, but only until completion of production of the first five batches after the rule takes effect.

9. Two comments supported FDA's proposal. One comment requested that FDA further specify limitations on aluminum content for SVP's.

FDA plans to implement the labeling requirements for SVP's and PBP's as proposed. FDA does not consider it appropriate to consider SVP's as a single category because SVP's are used for many indications other than TPN and in target populations where aluminum toxicity is not an issue.

10. One comment asked that FDA set a minimum level below which the amount of aluminum would not need to be declared.

FDA believes it is important for health care practitioners to know as much as possible about the aluminum levels being consumed by their patients. FDA believes the knowledge that a product has a low level of aluminum is just as important as the knowledge that a product contains high levels of aluminum. This labeling requirement permits health care professionals administering the drug to be able to calculate the total aluminum exposure the patient receives from multiple sources, and to be able to make appropriate substitutions to prepare ''low aluminum'' parenteral solutions for use in patients who are in high risk groups. Therefore, FDA believes all LVP's, SVP's, and PBP's used in TPN should be labeled with their aluminum levels.

11. One comment stated that information about the average amount of aluminum and its range at expiration for LVP's and SVP's is more useful than the maximum historical value at expiration, since otherwise a physician may overestimate the amount of aluminum being delivered to the patient. Another comment proposed that FDA require labeling of SVP's and PBP's with an average and a range of aluminum values at expiry, obtained from five production scale batches, such that the labeling would state ''Approximate average aluminum value —— µg/L. Approximate aluminum range —— µg/L to—— µg/L.''

The agency believes that information about the maximum concentration of aluminum potentially present at expiry is more useful to the practitioner. FDA's intention is to limit exposure to aluminum, and the use of average values or range at expiration would not achieve this goal as effectively.

C. Applicability to Biologics

In the proposed rule, FDA stated that licensed biological products were not covered by the proposal.

12. Twelve comments stated that biologics, specifically albumin, plasminate, and any other colloidal volume expanders, should be regulated. The Center for Biologics Evaluation and Research at the FDA is currently considering whether to regulate the levels of aluminum in licensed biological products. However, such regulation is outside the scope of this final rule.

D. Statement Regarding Maximum Intake of Aluminum

FDA proposed requiring a statement regarding the maximum daily aluminum intake recommended for patients. FDA sought comment on whether adding the language ''Patients should receive no more than 4 to 5 µg/kg/day of aluminum'' to the warning statement was appropriate and on whether a 4 to 5 µg/kilogram (kg)/day level is reasonable and adequate to protect the public health.

13. Two comments stated that FDA should include definitions of safe, unsafe, and toxic levels of aluminum. Three comments said that FDA should provide health professionals with a best estimate as to what constitutes a toxic aluminum load.

One comment stated that proposing to limit aluminum to 4 to 5 µg/kg/day would either make TPN formulations unavailable to neonates or expose doctors to liability, because it is a

difficult level to meet. Another comment said that 4 to 5 µg/kg/day is too low and may not allow patients to receive adequate amounts of calcium and phosphates. One comment noted that parenteral limits are much lower than oral limits, and expressed the belief that the proposed language did not offer guidance with respect to combined oral and parenteral daily limits. Another comment noted that the proposal does not provide a therapeutic alternative to too high aluminum levels, and asked that FDA include in the statement a definition of the populations truly at risk.

One comment stated that it would be difficult for health care professionals to calculate total aluminum intake, particularly for neonates receiving multiple intravenous infusions. Another comment stated that the factors that affect plasma aluminum clearance [1] can influence sensitivity to aluminum load [2] at any concentration of aluminum infused, and therefore aluminum concentration in TPN cannot be correlated directly to aluminum plasma levels.

Two comments recommended alternative statements. One suggested using the following language: ''Daily parenteral intake of greater than 4 to 5 µg/kg/day of aluminum has been associated with central nervous system and bone toxicity.'' Another suggested using the following warning: ''No aluminum toxicity to the brain or bone of premature neonates has been documented with intakes below 5 µg/kg/day; however, tissue loading may still occur at that rate of administration to preterm infants.''

One comment requested that FDA require such a warning statement only for those SVP's for which aluminum is a significant problem.

Based on these comments, FDA revised the warning to include a statement on current findings rather than a statement about maximum safe levels. FDA included specific references in the proposed rule (63 FR 176).

E. Acceptable Assay Methods for Determining Aluminum Levels

FDA proposed permitting applicants and manufacturers to have the discretion and flexibility to develop their own validated assay methods as long as the methods are in compliance with current good manufacturing practices requirements. Holders of approved applications for LVP's, SVP's and PBP's used in TPN therapy would be required to submit a supplement under part 314 (21 CFR part 314) in § 314.70(c) that described the method used for determining aluminum content. Holders of pending applications would be required to submit an amendment under § 314.60 or § 314.96. For SVP's not subject to approved applications, manufacturers would be required to maintain records for examination by FDA during inspections.

14. One comment stated that the USP provides an established system and procedure for the development of uniform analytical methods. The comment asked that FDA request that U.S.P. develop assay methods for determining aluminum content in parenterals rather than requiring individual companies to do so.

FDA believes that more than one analytical method may be suitable or necessary to assay aluminum content in different TPN products. Once FDA has reviewed several methods, it may evaluate whether it is appropriate to develop uniform analytical procedures. Individual companies may provide their validated analytical methods to USP for publication. Through this process, USP may establish a uniform analytical method for determining aluminum content in parenterals. FDA will accept any method that is validated and in compliance with current good manufacturing practice requirements.

15. One comment supported FDA's proposal. The comment also stated that analytical methods should be those in general use, such as flameless atomic absorption spectroscopy with a graphite furnace, and the method should be sufficiently sensitive to detect aluminum at the µg/L and not the milligram (mg) per liter level.

Again, FDA will accept any method that is validated and in compliance with current good manufacturing practice requirements. Any analytical method must be sensitive enough to detect aluminum at the µg/L and not the mg/L level, because the aluminum limits for LVP's and the required labeling statements for LVP's, SVP's, and PBP's are measured in µg/L.

F. Date of Implementation of the Final Rule

FDA proposed that any final rule that issued based on its proposed rule would become effective 1 year after the final rule's date of publication in the **Federal Register**. After that date, new drug applications (NDA's) submitted under § 314.50 and abbreviated new drug applications (ANDA's) submitted under 21 CFR 314.94 would have to comply with the new requirements under § 201.323.

16. One comment proposed an implementation date of 4 years after publication of the final rule in the **Federal Register** to account for the time necessary to collect and analyze data. Another comment suggested an implementation date of 31/2 years after publication of the final rule, or whenever data from five batches of product became available and the supplement was approved. This comment stated that the additional time is necessary to collect aluminum levels at expiry by an appropriate and validated method, since companies do not presently have such data.

Under the final rule, a manufacturer may use: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after this rule takes effect. This means that if expiry data under (1) and (2) of comment 16 in section III. F of this document are not available within 1 year, data available for the product during that year can be used under (3) of comment 16. As a manufacturer accrues additional data, it can then also use methods (1) and/or (2) of comment 16.

17. One comment asked whether FDA expects supplements to be submitted and approved and labeling changed within 1 year of publication of the final rule, or simply for supplements to be submitted within 1 year of publication of the final rule.

FDA expects supplements to be submitted and labeling to be changed within 1 year of publication of this final rule. Under current regulations (§ 314.70(c)) and the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 356a(b)), a manufacturer can file a changes being effected supplement for immediate implementation of this change. Thus, FDA believes implementation should take place in 1 year.

G. Cost of Implementing the Rule

FDA estimated in the proposed rule that the annualized cost to amino acid suppliers to implement the proposed rule would be $1,416,622. This figure includes first year or one-time costs estimated at $20 million.

18. One comment stated that wholesale raw material amino acids for intravenous use is a fraction of the $109 million market cited by FDA, and is actually much closer to $40 million. The comment went on to state that this market is shrinking and will continue to

[1] The clearance rate for aluminum is the rate at which aluminum is removed from the body by normal body functioning.

[2] Aluminum load is the amount of aluminum in the body.

do so for the foreseeable future. The comment estimated that, in light of these figures, the annual cost of compliance would represent 3 percent of sales, almost as much as the 4 percent spent by the industry on research and development. Another comment stated that the proposed rule underestimated the cost for compliance because validation without USP guidance would be difficult and because the number of worker hours required to test products is large.

FDA believes that the benefits of removing the health hazard outweigh costs to industry. FDA provides additional economic analysis based on these comments in section VII of this document.

19. The same comment stated that for LVP manufacturers, costs are even higher. The comment stated that the Eastern Research Group (ERG) study ''grossly underestimated the expense associated with label copy changes, non-compliant raw materials, finished product, and did not consider product recalls, which are inevitable, given the technically unfeasible 25 µg/L limit.''

FDA has reanalyzed these expenses in section VII of this document.

IV. Legal Authority

FDA's rule to regulate the aluminum content of certain parenteral drug products and to require aluminum content to be stated in the labeling of certain drug products is authorized by the Federal Food, Drug, and Cosmetic Act (the act). Section 502(a) of the act (21 U.S.C. 352(a)) prohibits false or misleading labeling of drugs, including, under section 201(n) of the act (21 U.S.C. 321(n)), failure to reveal material facts relating to potential consequences under customary conditions of use. Section 502(f) of the act requires drug labeling to have adequate directions for use, adequate warnings against use by patients where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration, as necessary to protect users. In addition, section 502(j) of the act prohibits the use of drugs that are dangerous to health when used in the manner suggested in their labeling. Drug products that do not meet the requirements of section 502 of the act are deemed to be misbranded.

In addition to the misbranding provisions, the premarket approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act (21 U.S.C. 355), FDA will approve a new drug application (NDA) only if the drug is shown to be safe and effective for its intended use under the conditions set forth in the drug's labeling. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act.

Part 201 sets out FDA's general labeling regulations. Under § 201.100(d), prescription drug products must bear labeling that contains adequate information by which licensed practitioners can use the drugs safely and for their intended purposes. Section 201.57 describes specific categories of information, including information for drug use in selected subgroups of the general population and warnings on adverse reactions and potential safety hazards that must be present to meet the requirements of § 201.100. In addition, under 21 CFR 314.125, an NDA will not be approved unless there is adequate safety and effectiveness information for the labeled uses and the product complies with the requirements of part 201.

Any drug product not in compliance with § 201.323 is misbranded under section 502 of the act and an unapproved new drug under section 505 of the act.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a class of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Implementation Plan

This final rule is effective on January 26, 2001. After that date, NDA's submitted under § 314.50 and abbreviated new drug applications (ANDA's) submitted under § 314.94 must comply with the labeling requirements under § 201.323. Holders of approved NDA's or ANDA's must meet the requirements of proposed § 201.323 by submitting supplements under § 314.70 or § 314.97. Applicants for LVP's used in TPN therapy and SVP's used as additives in TPN solutions are required to submit a supplement under § 314.70(c) that describes the assay method for determining the aluminum content. Applicants must submit validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment under § 314.60 or § 314.96.

VII. Analysis of Impacts

A. Introduction

FDA has examined the impact of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation). The expected aggregate costs of this final rule, and the anticipated impact of the rule on small entities, are described in the analysis below. FDA concludes that this final rule is consistent with the regulatory philosophy and the principles set forth in the Executive Order and in these two statutes.

B. Compliance Requirements and Costs

In this final rule, FDA is amending its regulations by establishing a maximum permissible aluminum limit for LVP's used in TPN, as well as requiring certain label and package insert information for aluminum content in LVP's and SVP's used in TPN. The agency is issuing this rule to lower the risk of aluminum toxicity in light of evidence linking the use of parenteral drugs containing aluminum to morbidity and mortality among patients on TPN therapy. FDA estimates total annualized compliance costs for the final rule at about $23.8 million. Further, for reasons explained elsewhere in this section of the document, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. FDA has not identified any other Federal rules that duplicate, overlap, or conflict with this final rule.

In the preamble to the proposed rule, FDA relied on the report of its

contractor, ERG, for its estimates of compliance cost burdens of the proposed rule. Total annualized compliance costs were estimated at $20.1 million. This was composed of a one time cost of $63.8 million annualized at $9.8 million (over 10 years at a 7 percent discount rate) plus recurring annual costs of $10.3 million. Over 50 percent of the total costs would be due to actions undertaken to manufacture LVP solutions and their components that would comply with the aluminum limit requirements.

In response to the proposed rule, FDA received many comments, some of which referred to the cost estimates contained in the ERG report. As a result of these comments, ERG reanalyzed areas of concern specified in the comments and made some modifications to its original analysis of compliance costs. These changes are included in an addendum to the initial compliance cost analysis (available in the docket). As a result, FDA concludes that the final rule will impose annualized compliance costs of about $23.8 million on the affected industries, an increase of $3.7 million from its cost estimate for the proposed rule. This is composed of a one time cost of $67.3 million annualized at $10.6 million (over 10 years at a 7 percent discount rate) plus recurring annual costs of $13.2 million. The remainder of this section summarizes the addendum and responds to other comments concerning economic issues mentioned earlier in this preamble.

One comment to the proposal stated that FDA had underestimated the costs of label copy changes, noncompliant raw materials, finished product, and product recalls. As a result, ERG contacted industry to gain more information and data, where possible, to improve the accuracy of these estimates. ERG's new research into pharmaceutical labeling costs shows that compliance costs for the label changes, including inventory losses occurring at the changeover, are higher for this rule than previously estimated. Accordingly, FDA has increased its labeling change estimate to about $588,000 annually.

The original ERG report estimated compliance costs for final release testing for aluminum in finished LVP products and their raw material inputs at about $4.5 million annually. After subsequent discussions with industry, ERG recognized that some LVP production lots will fail to meet the required aluminum limit, but noted that this loss of finished product will be reduced by measures to lower the aluminum level of the raw material inputs. Similarly, ERG found that the cost of product recalls will be low due to the final release testing of LVP products, but it could not predict the likely frequency of such recalls.

The same comment also suggested that dextrose suppliers would incur compliance costs because some dextrose products contain aluminum at a level that might exceed the proposed limit. Upon further consideration of the possible existence of noncompliant raw materials, including dextrose and amino acids, and discussions between industry and ERG, FDA adjusted its original cost estimate to include an additional $2.72 million annually due to losses from noncompliant raw materials.

Another comment stated that FDA had underestimated laboratory assay method validation costs. Following ERG's review of its original analysis and further discussions with industry, FDA agrees with the comment as it relates to LVP manufacturers and has increased one-time assay method validation costs for this sector from $737,000 to $2.1 million. Further research into current compliance rates across all industry sectors, however, resulted in lowering assay method validation costs for some other sectors. The net result is a slight increase in total annualized assay method validation costs to about $1.72 million. Further, the estimate of annualized equipment purchase costs has been increased by $350,000.

Another comment referred to a statistic FDA used to show the relative size of the expected cost impact on amino acid suppliers. Specifically, the comment disagreed with the FDA statement that annual compliance costs for raw material amino acid suppliers would represent only 0.09 percent of sales, having been derived from $1.4 million in compliance costs and $1.6 billion in total amino acid sales. The comment proceeded with its own estimate of the relative size of the compliance cost for these suppliers, calculating it to be 3 1/2 percent of the $40 million in amino acid sales to TPN solution manufacturers, a level roughly equivalent to total research and development costs. Upon further analysis, FDA reaffirms its estimate of the average annual compliance cost per amino acid manufacturing establishment of about $1.4 million. However, because there are approximately nine supplier establishments, the total cost would be about $12.75 million, which equates to an even greater percentage of total sales of amino acids to TPN solution manufacturers, about 32 percent, than the comment suggested. The costs, nevertheless, amount to only about 0.09 percent of the total $1.6 billion in sales of amino acids to all industries as stated in the proposal.

As in its original analysis, ERG discussed but could not reliably forecast the likelihood that some suppliers of amino acids and possibly dextrose would abandon the TPN solution market, due to the relatively small percentage of total amino acid and dextrose sales to TPN manufacturers. Because the industry currently uses nine different suppliers, FDA does not anticipate product shortages. Nevertheless, the agency will remain alert to the possibility.

Any professional skills necessary for implementation of this final rule should already exist within the firms and should not need to be newly acquired.

C. Affected Entities

If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the significant economic impact of such a rule on small entities. In the proposed rule, FDA relied on the estimated compliance costs by type of establishment as projected by ERG. That analysis determined that very few of the affected companies are considered small by the standards of the Small Business Administration (SBA).[3] Therefore, the agency certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The agency received no comments specifically directed at this certification. Nevertheless, due to comments on other aspects of its estimates and modifications to the original analysis, FDA has reanalyzed the small business impacts of the final rule.

Fewer than 8 of the 24 companies identified in the ERG report as a manufacturer or supplier of TPN products or their inputs are small businesses according to the SBA definitions. No more than four SVP manufacturers are small under the SBA definitions. Moreover, since the average annualized cost for these establishments is estimated at about $51,000 each, the estimated annualized compliance costs for these companies are expected to account for less than one percent of their annual revenues. FDA further identified one amino acid supplier that may be a small business; but again, the annualized compliance costs for this firm would be less than 1 percent of annual revenues. The size of one dextrose supplier and one electrolyte

[3] SBA considers a small business in this context to be one with fewer than 750 employees (Ref. 2).

supplier could not be confidently determined due to the scarcity of data. Therefore, it was not possible to determine whether the compliance costs of these firms would represent more than 1 percent of their revenues. Based on the very few small firms that might incur a significant impact, the Commissioner of Food and Drugs certifies under section 605(b) of the Regulatory Flexibility Act that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before establishing any rule that requires expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation, or about $108 million in 1999) in any one year. The publication of this final rule concerning the regulation of TPN containing aluminum is not expected to result in expenditures of funds by State, local, or tribal governments, or the private sector in excess of $100 million annually. Because the agency estimates the largest 1-year expenditure to be about $80.5 million (representing the sum of one-time expenditures and annual expenditures), no further analysis is warranted according to the Unfunded Mandates Reform Act.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition.

Description: FDA is amending its regulations to add certain labeling requirements for aluminum content in LVP's, SVP's and PBP's used in TPN. FDA is also specifying an upper limit of aluminum permitted in LVP's and requiring manufacturers to submit to FDA for approval validated assay methods for determining aluminum content in parenteral drug products. The agency is adding these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially premature neonates and patients with impaired kidney function.

Based on data concerning the number of applications for LVP's, SVP's, and PBP's used in TPN received by the agency, FDA estimates that the labeling for approximately 200 products will be changed under § 201.323(b), (c), and (d). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each labeling change. Based on data collected by the Eastern Research Group (Ref. 1) concerning the number of affected manufacturers, FDA estimates that approximately 65 respondents will each submit one validated assay method annually under § 201.323(e). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each validated assay.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
201.323(b), (c), (d)	200	1	200	14	2,800
201.323(e)	65	1	65	14	910
Total					3,710

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA did not receive any comments on the paperwork reduction aspects of the proposed rule.

The information collection provisions of this final rule have been submitted to OMB for review.

Before this rule becomes effective, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the information collection displays a current OMB control number.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a Federalism summary impact statement is not required.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eastern Research Group, Addendum to Compliance Cost Analysis for a Regulation for Parenteral Drug Products Containing Aluminum, April 15, 1999.

2. U.S. Small Business Administration, Table of Size Standards, 1996.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

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 part 201 is 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 201.323 is added to subpart G to read as follows:

§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.

(a) The aluminum content of large volume parenteral (LVP) drug products used in total parenteral nutrition (TPN)

therapy must not exceed 25 micrograms per liter (μg/L).

(b) The package insert of LVP's used in TPN therapy must state that the drug product contains no more than 25 μg/L of aluminum. This information must be contained in the ''Precautions'' section of the labeling of all large volume parenterals used in TPN therapy.

(c) The maximum level of aluminum present at expiry must be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages (PBP's) used in the preparation of TPN solutions. The aluminum content must be stated as follows: ''Contains no more than—— μg/L of aluminum.'' The immediate container label of all SVP's and PBP's that are lyophilized powders used in the preparation of TPN solutions must contain the following statement: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than —— μg/L.'' This maximum level of aluminum must be stated as the highest of:

(1) The highest level for the batches produced during the last 3 years;

(2) The highest level for the latest five batches, or

(3) The maximum historical level, but only until completion of production of the first five batches after January 26, 2001.

(d) The package insert for all LVP's, all SVP's, and PBP's used in TPN must contain a warning statement. This warning must be contained in the ''Warnings'' section of the labeling. The warning must state:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

Research indicates that patients with impaired kidney function, including premature neonates, who receive parenteral levels of aluminum at greater than 4 to 5 μg/kg/day accumulate aluminum at levels associated with central nervous system and bone toxicity. Tissue loading may occur at even lower rates of administration.

(e) Applicants and manufacturers must use validated assay methods to determine the aluminum content in parenteral drug products. The assay methods must comply with current good manufacturing practice requirements. Applicants must submit to the Food and Drug Administration validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment under § 314.60 or § 314.96 of this chapter.

Dated: December 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1788 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Ractopamine Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly and Co. The NADA provides for use of a ractopamine hydrochloride Type A medicated article to make Type B and Type C medicated swine feeds. The Type C medicated finishing swine feeds are used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness. The regulations are also amended to provide for an acceptable daily intake (ADI) for ractopamine and tolerances for drug residues in edible products derived from treated swine.

DATES: This rule is effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 140–863 that provides for use of Paylean® (ractopamine hydrochloride) Type A medicated article to make Type B and Type C medicated swine feeds. The Type C medicated finishing swine feeds must contain at least 16 percent crude protein. Feeds containing 4.5 grams per ton (g/t) ractopamine hydrochloride are used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness. Feeds containing 4.5 to 18 g/t ractopamine hydrochloride are used for improved feed efficiency and increased carcass leanness. The NADA is approved as of December 22, 1999, and the regulations in part 558 (21 CFR part 558) are amended by adding § 558.500 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Furthermore, § 558.4(d) is amended in the ''Category I'' table by adding an entry for ''ractopamine'' to provide for the assay limits for Type A medicated articles and Type B/C medicated feeds and the maximum Type B medicated feed level.

In addition, part 556 (21 CFR part 556) is amended by adding § 556.570 to establish an ADI for total ractopamine and tolerances for residues of ractopamine in edible tissues of treated swine.

In accordance with the freedom of information provisions of 21 CFR part and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for food-producing animals qualifies for 5 years of marketing exclusivity beginning December 22, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been previously approved for any other application filed under section 512(b)(1).

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.570 is added to subpart B to read as follows:

§ 556.570 Ractopamine.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of ractopamine is 1.25 micrograms ractopamine hydrochloride per kilogram of body weight per day.

(b) *Tolerances.* Swine—Tolerances are established for residues of ractopamine hydrochloride parent (marker residue) in edible swine tissues of 0.05 part per million (ppm) in muscle, and 0.15 ppm in liver (target tissue). Residues of ractopamine in swine muscle are not indicative of the safety of residues in other edible tissue.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.4 is amended in paragraph (d) in the ''Category I'' table by adding an entry alphabetically for ''Ractopamine'' to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent [1] type A	Type B maximum (200x)	Assay limits percent [1] type B/C [2]
* *	*	* *	* *
Ractopamine	85–105	1.8 g/lb (0.4%)	80–110
* *	*	* *	* *

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

5. Section 558.500 is added to subpart B to read as follows:

§ 558.500 Ractopamine.

(a) *Approvals.* Type A medicated articles: 9 grams of ractopamine hydrochloride per pound to 000986 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Related tolerances.* See § 556.570 of this chapter.

(d) *Conditions of use.* (1) *Swine*—(i) *Amount.* 4.5 grams of ractopamine hydrochloride per ton of Type C feed for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; 4.5 to 18 grams per ton for improved feed efficiency and increased carcass leanness; fed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight.

(ii) *Limitations.* Feed continuously as sole ration. Not for use in breeding swine.

(2) [Reserved]

Dated: January 13, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–1789 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N–0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing reporting by manufacturers, importers, distributors and health care (user) facilities of adverse events related to medical devices. Amendments are being made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Susan E. Bounds, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION:

I. General

In the **Federal Register** of September 14, 1984 (49 FR 36326), FDA issued medical device reporting regulations for manufacturers and importers under the act and the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), which required medical device user facilities and distributors to report certain device-related adverse events.

Distributor reporting requirements became effective on May 28, 1992, following the November 26, 1991 (56 FR 60024), the publication of those provisions in a tentative final rule. In the **Federal Register** of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law and were now codified in part 804 (21 CFR part 804).

On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Public Law 102–112) amending certain provisions of section 519 of the act (21 U.S.C. 360i) relating to reporting of adverse device events. Among other things, the 1992 amendments amended section 519 of the act to modify the requirements for manufacturer and importer reporting. Under the regulations issued under the SMDA and the 1992 amendments, importers are required to report as manufacturers if they are engaged in manufacturing activities or to report as distributors if they are engaged solely in distribution activities.

On November 21, 1997, the President signed FDAMA (Public Law 105–115) into law. FDAMA made several changes regarding the reporting of adverse experiences related to devices. On May 12, 1998, FDA published a proposed rule (63 FR 26129) (hereinafter referred to as the May 1998 proposal) and a direct final rule (63 FR 26069) (hereinafter referred to as the May 1998 direct final rule) to implement the amendments to the Medical Device Reporting (MDR) provisions. FDA received at least one significant adverse comment on the direct final rule. Accordingly, consistent with FDA's procedures on direct final rulemaking, FDA is withdrawing the May 1998 direct final rule and is addressing the comments in this final rule based upon the May 1998 proposal.

The May 1998 proposal was intended to amend the medical device reporting requirements to implement the following changes made by FDAMA:

1. Section 213(a) of FDAMA revised section 519(a) of the act to eliminate distributors as an entity required to report adverse device events. Importers are still required to report under section 519(a) of the act.

2. Section 213(a) of FDAMA also amended section 519(a) of the act to clarify that existing requirements for distributors to keep records concerning adverse device events and make them available to FDA upon request continue to apply.

3. Section 213(a)(2) of FDAMA revoked section 519(d) of the act, which required manufacturers, importers, and distributors to submit to FDA an annual certification concerning the number of reports filed under section 519(a) in the preceding year. As a result, certification requirements are eliminated.

4. Section 213(c)(1)(A) of FDAMA revised section 519(b)(1)(C) of the act to require that device user facilities submit an annual rather than a semiannual summary of their reports to FDA.

5. Section 213(c)(1)(B) of FDAMA eliminated section 519(b)(2)(C) of the act. This section had required FDA to disclose, upon request, the identity of a device user facility making a report under section 519(b) of the act if the identity of the device user facility was included in a report required to be submitted by a manufacturer, distributor, or importer. As a result of this change by FDAMA, FDA now may disclose the identity of a device user facility only: in connection with an action concerning a failure to report or false or fraudulent reporting; in a communication to the manufacturer of the device; or to the employees of the Department of Health and Human Services, the Department of Justice, and duly authorized committees and subcommittees of Congress.

6. Section 422 of FDAMA states that FDA's regulatory authority under the act, relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. The proposal stated that, under this rule of construction, the reporting requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco would remain unchanged.

Furthermore, along with the substantive changes to the MDR provisions required by FDAMA, the agency proposed certain nonsubstantive changes to the organization of the provisions contained in parts 803 (21 CFR part 803) and 804. These organizational changes did not affect any reporting burdens; rather, the changes were made for the sake of clarity and consistency within the CFR.

II. Summary of Comments

The agency received nine comments submitted by medical device manufacturers, importers, distributors, and trade associations.

1. Four comments stated that the agency did not follow Congress' direction that FDA consider changing the distributor recordkeeping requirements. The Congressional Conference Committee (the Conference Committee) recommended that FDA consider limiting the length of time that distributors are required to retain records to a period of 6 years (the current requirement is a minimum of 2 years, or the expected life of the product). The Conference Committee also recommended that FDA consider providing for electronic retention of records.

The agency disagrees that it did not properly follow Congress' direction or intent. The Conference Committee recommended that the agency consider changes to the distributor recordkeeping requirements. However, FDAMA contained no provisions that required any specific changes to the requirements.

The agency carefully considered the recommendations of the conference committee. The agency determined that the protection of the public health would not be adequately served if distributor recordkeeping was limited to a period of 6 years. Under the new quality system regulations contained in part 820 (21 CFR part 820), manufacturers (including initial distributors of foreign manufacturers) must retain records for a period equal to the design and expected life of the device (but no less than 2 years). The agency believes it is appropriate to require distributors to retain records for the same time period. This is especially important because distributors are no longer required to report any adverse event information to the agency, and the agency's primary access to the distributor complaint information is through its periodic inspection and examination of the distributor records.

FDA also considered electronic retention of distributor records. Prior to FDAMA and the proposed rule, the agency had not prohibited the electronic retention of records, nor did it intend to prohibit electronic recordkeeping based upon the proposal. When the distributor recordkeeping requirements were shifted from part 804 to part 803, the language remained largely unchanged. However, in order to avoid further confusion regarding electronic retention of records, the agency is modifying proposed § 803.18(d)(1) to clarify that distributor records may be either written or electronic.

2. Three comments stated that in describing distributor recordkeeping, reference to the quality system regulations, specifically § 820.198 (Complaint files), is inappropriate because § 820.198 applies only to manufacturers.

The agency agrees with this comment in part. The section being revoked (804.35) references § 820.198 because many of the recordkeeping requirements in § 820.198 would apply to all distributors. However, for the sake of clarity, the agency is revising § 803.18(d) to remove the reference to § 820.198, and is substituting language to identify the relevant requirements from § 820.198 that apply to distributors who are not importers.

3. Two comments suggested that the requirement that importers submit

adverse event reports within 10 days be changed to allow 30 days for reporting.

The agency agrees and is modifying the regulation accordingly. Prior to the SMDA, importers were subject to the same reporting timeframes as manufacturers under the 1984 MDR regulation. Consistent with the requirements of the SMDA, the 10-day reporting requirement was imposed on distributors and, because part 804 defined distributors to include importers, the 10-day reporting requirement was imposed on importers as well. Under FDAMA, distributors are no longer required to submit adverse event reports, but the reporting requirements continue to apply to importers. Because importers are subject to many of the same requirements as manufacturers under the new quality system regulations contained in part 820, the agency will allow importers the same 30 days it provides manufacturers to gather information and submit reports.

4. One comment stated that the fields to be filled out on FDA Form 3500A (MEDWATCH reporting form) should be specifically identified for importers. The comment also requested clarification regarding whether the agency's definition of ''importer'' for the purpose of MDR includes firms who sell directly to the ultimate user.

The agency agrees that the fields to be filled out by importers on FDA Form 3500A should be specified within the regulation. Because the requirements and burdens would not be affected by revising the style and format of § 803.43, the agency is modifying the section to be consistent with §§ 803.32 and 803.52, which describe the information to be submitted on the MEDWATCH form. Furthermore, proposed § 803.43 was inadvertently misnumbered. For the sake of consistency in numbering, the final rule will renumber this section as § 803.42.

The agency notes that, because ''distributors'' had previously been defined to include ''importers,'' FDA Form 3500A does not specifically address importer information and does not use the term ''importers.'' However, block F of the MEDWATCH form is identified for use by device user facilities and distributors. An importer should continue to complete blocks A, B, D, E, and F until the form is revised to remove references to ''distributor'' and replace them with ''importer.''

The agency clarifies that firms who purchase products from a foreign manufacturer and sell directly to the ultimate user are considered retailers and not importers under part 803 and are not required to report.

5. One comment stated that distributor reporting is important for the protection of the public health. The comment recommended, as an alternative to distributor reporting, a modification to the medical device labeling requirements to require that manufacturer contact information be included in the labeling for all devices in order to ensure proper adverse event reporting.

The agency agrees that consumers are likely to contact medical device distributors with their device complaints. Without distributor reporting, it is possible that the agency will not receive information regarding some complaints. However, under FDAMA, the agency no longer has the authority to require distributor reporting.

Although distributors are no longer under an obligation to report adverse device events, the agency continues to encourage distributors to provide manufacturers with adverse event information so that consumer complaints may be appropriately investigated and reported.

The alternative suggestion that manufacturer contact information be included in device labeling would be likely to increase the amount of information the manufacturer and the agency receives from the consumer. However, implementing this type of change to the medical device labeling regulation is beyond the scope of this rule. The agency is currently reviewing its medical device labeling regulation and considering certain modifications. The question of manufacturer contact information appearing on device labeling will be considered as part of that regulatory effort.

6. One comment stated that the agency erroneously interpreted section 422 of FDAMA, regarding the regulation of tobacco products, tobacco ingredients, or tobacco additives. The comment stated that section 422 simply provides that nothing in FDAMA shall affect the question of whether or not FDA has authority to regulate such products. The comment suggests that, if FDA has the authority to regulate such products, they should be regulated in the same manner as other medical devices.

The agency disagrees with this comment. Section 422 of FDAMA states that ''Nothing in this Act or the amendments made by this Act shall be construed to affect the question of whether the Secretary of Health and Human Services has any authority to regulate any tobacco product, tobacco ingredient, or tobacco additive.'' Although this language may suggest that FDAMA is simply silent regarding the agency's authority to regulate tobacco, section 422 goes on to state that ''Such authority, if any, shall be exercised under the Federal Food, Drug, and Cosmetic Act as in effect on the day before the date of the enactment of this act.'' Beyond the question of whether the agency has authority to regulate tobacco, this language directs the agency as to how it should exercise any such authority once pending litigation is resolved.

Under section 422 of FDAMA, therefore, Congress neither affirms nor denies the agency's authority to regulate tobacco, but it does direct the agency to continue regulating tobacco as it had been doing prior to FDAMA (if authority to regulate tobacco exists). Prior to FDAMA, distributor reporting and manufacturer and distributor certification were required under the act. If the agency were to exercise its authority under the act ''as in effect on the day before the date of the enactment of [FDAMA],'' distributor reporting and manufacturer and distributor certification requirements would continue to apply to manufacturers and distributors of cigarettes and smokeless tobacco products.

However, while the agency disagrees with the comment's interpretation of section 422 of FDAMA, FDA finds persuasive the comment's arguments that tobacco manufacturers and distributors should be exempt from the requirement of annual certification of MDR's and that distributors should be exempt from MDR reporting requirements under the residual authority of the act. The agency has authority under section 519(c) of the act to exempt, by regulation, any class of persons from the medical device reporting requirements upon a finding that such reporting by that class is not necessary to ''assure that a device is not adulterated or misbranded or * * * otherwise to assure its safety and effectiveness'' (21 U.S.C. 360i(c)). The agency finds that the statutory criteria for exemption are met because reasonable assurances will be provided by the remaining medical device reporting requirements, that is, reporting and recordkeeping required by manufacturers and importers and recordkeeping required by distributors.

7. On its own initiative, FDA has revised § 803.22(b)(2) to make clear that importers who receive reportable information about a device not imported by them need not submit a report to FDA but, instead, must forward the information to FDA along with a cover letter explaining that they do not import the device in question.

8. On its own initiative, FDA has determined that it is not necessary for importers to submit supplemental reports under § 803.56 as proposed. Instead, FDA will require importers to submit additional information only when requested by FDA under § 803.15. No change to § 803.15 is necessary.

9. Also on its own initiative, FDA has made some nonsubstantive changes to the definitions in § 803.3 in order to integrate the requirements for importer reporting into part 803.

III. 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.

IV. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies the elimination of reporting by distributors, continues reporting by importers as they have been doing to date with an extension of the time for reporting, increases protection from disclosure of the identity of device user facilities that have submitted reports, reduces summary reporting by device user facilities from semiannual to annual, eliminates annual certification for manufacturers and distributors (including importers) of medical devices, and makes other nonsubstantive changes. The agency certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. This final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Reporting and recordkeeping requirements for manufacturers, importers, user facilities, and distributors of medical devices under the FDA Modernization Act (FDAMA)—General Requirements.

Description: FDAMA contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. This section of FDAMA also modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities.

This final rule amends FDA's regulations in part 803 and revokes part 804 to reflect the changes to medical device reporting made by FDAMA. The final rule has also been amended to implement the exemptions for manufacturers and distributors of cigarettes and smokeless tobacco products discussed below.

In accordance with 5 CFR 1320.8(d), on May 12, 1998, requests for public comment were published in the **Federal Register** (see 63 FR 26069 and 63 FR 26129). Several comments were received in response to the proposed rule and are discussed in detail previously in this final rule.

Four comments objected that FDA did not follow the congressional recommendation in the conference report on FDAMA that FDA limit the time that distributors be required to keep records to a maximum of 6 years. The direct final rule required that distributors keep records for 2 years or the expected life of the device, whichever is greater.

FDA carefully considered the recommendations of the conference committee. The agency determined that the protection of the public health would not be adequately served if distributor recordkeeping was limited to a period of 6 years. Under the new quality system regulations contained in part 820, manufacturers (including initial distributors of foreign manufacturers) must retain records for a period equal to the design and expected life of the device (but no less than 2 years). The agency believes it is appropriate to require distributors to retain records for the same time period. This is especially important because distributors are no longer required to report any adverse event information to the agency, and the agency's primary access to the distributor complaint information is its periodic inspection and examination of the distributor records.

FDA considered electronic retention of distributor records. Prior to FDAMA and the May 1998 proposal, the agency had not prohibited the electronic retention of records, nor did it intend to prohibit electronic recordkeeping based upon the May 1998 proposal. When the distributor recordkeeping requirements were shifted from part 804 to part 803, the language remained largely unchanged. However, in order to avoid further confusion regarding electronic retention of records, the agency is modifying proposed § 803.18(d)(1) to clarify that distributor records may be either written or electronic.

Three comments stated that it is inappropriate to refer to the quality systems regulations (§ 820.198) in describing distributor recordkeeping because § 820.198 does not apply to distributors.

FDA agrees and has revised § 803.18(d) accordingly to remove the reference to § 820.198. FDA is substituting language to identify the relevant requirements from § 820.198 that apply to distributors who are not importers. FDA notes, however, that § 820.198 does apply to importers of devices.

Two comments suggested that the reporting timeframe for importers should be changed to 30 days from 10 days.

FDA agrees with these comments and has revised the final rule. Previously,

importers were included in part 804 with the reporting requirements for distributors. Because distributors are no longer required to report, part 804 is eliminated and importers are included in part 803 with manufacturers. The 30-day timeframe is consistent with the timeframe for manufacturers.

One comment suggested that the form for reporting adverse events (FDA Form 3500A) should be revised to refer specifically to importers. Another comment asked for clarification as to whether a person who sells directly to the ultimate user may be considered an ''importer''.

The agency agrees that the fields to be filled out by importers on FDA Form 3500A should be specified within the regulation. Because the requirements and burdens would not be affected by revising the style and format of § 803.43, the agency is modifying the section to be consistent with §§ 803.32 and 803.52, which describe the information to be submitted on the MEDWATCH form. Furthermore, proposed § 803.43 was inadvertently misnumbered. For the sake of consistancy in numbering, the final rule will renumber this section as § 803.42.

The agency notes that, because ''distributors'' had previously been defined to include ''importers,'' FDA Form 3500A does not specifically address importer information and does not use the term, ''importers.'' However, block F of the MEDWATCH form is identified for use by device user facilities and distributors. An importer should continue to complete blocks A, B, D, E, and F until the form is revised to remove references to ''distributor'' and replace them with ''importer.'' The agency clarifies that firms who purchase products from a foreign manufacturer and sell directly to the ultimate user are considered retailers and not importers under part 803 and are not required to report.

One comment suggested that distributor reporting is important for the protection of the public health and recommended that, as an alternative to distributor reporting, FDA should require manufacturer contact information on the labeling to assure proper adverse event reporting.

The agency agrees that consumers are likely to contact medical device distributors with their device complaints. Without distributor reporting, it is possible that the agency will not receive information regarding some complaints. However, under FDAMA, the agency no longer has the authority to require distributor reporting. Although FDA cannot require distributor reporting, FDA encourages distributors to report adverse event information to manufacturers so that they may investigate and report it as appropriate. The suggestion that FDA require manufacturer contact information on the labeling is beyond the scope of this rule and FDA will consider it separately.

One comment objected that FDA incorrectly interpreted section 422 of FDAMA regarding the regulation of tobacco products, tobacco ingredients and tobacco additives. The comment stated that section 422 only means that nothing in FDAMA shall affect whether FDA has the authority to regulate tobacco products. The comment further said that section 422 of FDAMA does not mean, as FDA believes, that the requirements, such as MDR reporting, for manufacturers and distributors of tobacco products are unchanged by FDAMA.

The agency disagrees with this comment. Section 422 of FDAMA states that ''Nothing in this Act or the amendments made by this Act shall be construed to affect the question of whether the Secretary of Health and Human Services has any authority to regulate any tobacco product, tobacco ingredient, or tobacco additive.'' Although this language may suggest that FDAMA is simply silent regarding the agency's authority to regulate tobacco, section 422 of FDAMA goes on to state that ''Such authority, if any, shall be exercised under the Federal Food, Drug, and Cosmetic Act as in effect on the day before the date of the enactment of this act.'' Beyond the question of whether the agency has authority to regulate tobacco, this language directs the agency as to how it should exercise such authority once pending litigation is resolved.

Under section 422 of FDAMA, therefore, Congress neither affirms nor denies the agency's authority to regulate tobacco, but it does direct the agency to continue regulating tobacco as it had been doing prior to FDAMA (if authority to regulate tobacco exists). Prior to FDAMA, distributor reporting and manufacturer and distributor certification were required under the act. If the agency were to exercise its authority under the act ''as in effect on the day before the date of the enactment of [FDAMA],'' distributor reporting and manufacturer and distributor certification requirements would continue to apply to manufacturers and distributors of cigarettes and smokeless tobacco products.

However, while the agency disagrees with the comment's interpretation of section 422 of FDAMA, FDA finds persuasive the comment's arguments that tobacco manufacturers should be exempt from the requirement of annual certification of MDR's and that distributors should be exempt from MDR reporting requirements under the residual authority of the act. The agency has authority under section 519(c) of the act to exempt, by regulation, any person from the medical device reporting requirements upon a finding that such reporting is not necessary to ''assure that a device is not adulterated or misbranded or * * * otherwise to assure its safety and effectiveness'' (21 U.S.C. 360i(c)). The agency finds that the statutory criteria for exemption are met in light of the fact that Congress has repealed the requirements for manufacturer and distributor annual certification and distributor reporting. A reasonable assurance of the safety and effectiveness of tobacco products will be provided by the remaining medical device reporting requirements, that is, reporting and recordkeeping required of manufacturers and importers and recordkeeping required of distributors.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section/FDA Form	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
803.15	50	1	50	4	200
803.19	150	1	150	3	450
803.22(b)(2)	100	1	100	.25	25
803.33 (FDA Form 3419)	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.55 (FDA Form 3417)	1,000	20	20,000	1.1	22,000
Total					25,060

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per recordkeeper	Total hours
803.17	2,000	1	2,000	3.3	6,600
803.18	39,764	1	39,764	1.5	59,646
Total					66,246

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens under this direct final rule are explained as follows:

A. Reporting Requirements

Prior to the program change reflected in this rule, distributors (including importers) were required to submit supplemental information under § 804.32. Distributors (who are not importers) are no longer required to submit MDR reports (including supplemental reports), and FDA has determined that it will not be necessary for importers to submit supplemental information except when FDA requests additional information under § 803.15. FDA has revised the final rule accordingly. Section 803.15 provides that FDA may request a reporter to submit additional or clarifying information concerning an MDR report when FDA determines that additional information is necessary for the protection of the public health. The burden estimate for this section includes only the burden for importers.

Prior to the program change reflected in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this rule, § 803.19 is modified to transfer the exemption provisions for importers of medical devices from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices are no longer required to submit MDR reports under this rule. The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.22(b)(2) provided that, if a manufacturer erroneously receives information about an adverse event concerning a device that they had not manufactured, the manufacturer must submit the report to FDA along with a cover letter explaining that the device in question was not manufactured by that firm. This final rule amends § 803.22(b)(2) to apply the same requirement to importers. The requirements of § 803.22(b)(2) were not previously reviewed by OMB under the PRA. Thus, the estimated burden reflects FDA's experience with this provision with regard to manufacturers and includes the estimated burden for both manufacturers and importers.

Prior to the program change reflected in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this rule, user facilities are required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission. FDA Form 3419 is being revised to reflect this change.

Under this rule the reporting requirement for importers of medical devices previously codified under § 804.25 is being transferred to § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. Section 803.40 requires importers to submit reports within 30 days after learning of the reportable event rather than 10 days as provided in § 804.25; this change does not affect the burden.

This rule does not amend § 803.55 but FDA is seeking approval for FDA Form 3417 on which baseline reports are to be submitted. The agency's estimate is based on FDA's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. As stated above, FDA is also exempting manufacturers and distributors of cigarettes and smokeless tobacco products from the requirement of annual certification. Therefore, under this rule, §§ 803.57 and 804.30 are being eliminated.

Because distributors, including distributors of cigarettes and smokeless tobacco products, will no longer be required to report, the final rule also removes §§ 804.25 (Reports by distributors), 804.32 (Supplemental information), and 804.33 (Alternative reporting requirements).

B. Recordkeeping Requirements

Prior to the program change reflected in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint

processing, and documentation of information related to MDR's. Under this rule, the requirements for establishing written MDR procedures for importers of medical devices have been transferred to § 803.17. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities, and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Prior to the program change reflected in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this rule, § 803.18 is modified to transfer the recordkeeping requirements for importers and other distributors of medical devices including cigarettes and smokeless tobacco products from § 804.35 and § 804.35 is removed. As discussed above, this recordkeeping may be done in an electronic format.

Under the proposed rule, distributors of cigarettes and smokeless tobacco products would have been required to establish written internal procedures for evaluating and reporting events. Because distributors of cigarettes and smokeless tobacco products will not be required to report under the final rule, § 804.34 is deleted from the final rule.

The information collections of this final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions of this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed, must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. Medical device distributors, as defined in § 803.3, are also required to maintain records of incidents (files). Furthermore, manufacturers and importers are also required to report certain device malfunctions. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

* * * * *

3. Section 803.3 is amended by redesignating paragraphs (m) through (ee) as paragraphs (n) through (ff), respectively; by revising paragraph (c), the first sentence of paragraph (f), newly redesignated paragraphs (p) introductory text and (p)(1), paragraph (r) introductory text and paragraph (r)(2), and by adding paragraphs (g) and (m) to read as follows:

§ 803.3 Definitions.

* * * * *

(c) *Become aware* means that an employee of the entity required to report has acquired information reasonably suggesting a reportable adverse event has occurred.

(1) Device user facilities are considered to have ''become aware'' when medical personnel, as defined in paragraph (s) of this section, who are employed by or otherwise formally affiliated with the facility, acquire such information about a reportable event.

(2) Manufacturers are considered to have become aware of an event when:

(i) Any employee becomes aware of a reportable event that is required to be reported within 30 days or that is required to be reported within 5 days under a written request from FDA under § 803.53(b); and

(ii) Any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable MDR event or events, from any information, including any trend analysis, necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

(3) Importers are considered to have become aware of an event when any employee becomes aware of a reportable event that is required to be reported by an importer within 30 days.

* * * * *

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in paragraphs (l), (b), (t), (u), and (v), respectively, of this section, which is not a ''physician's office,'' as defined in paragraph (w) of this section.

* * *

(g) *Distributor* means, for the purposes of this part, any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under paragraph (o) of this section.

* * * * *

(m) *Importer* means, for the purposes of this part, any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under paragraph (o) of this section.

* * * * *

(p) *Manufacturer or importer report number* means the number that uniquely identifies each individual adverse event report submitted by a

manufacturer or importer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device, or the registration number for the importer. (If the manufacturing site or the importer does not have a registration number, FDA will assign a temporary MDR reporting number until the site is officially registered. The manufacturer or importer will be informed of the temporary number.);

* * * * *

(r) *MDR reportable event (or reportable event)* means:

(1) * * *

(2) An event about which manufacturers or importers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.9 [Amended]

4. Section 803.9 *Public availability of reports* is amended by adding ''or'' after the semicolon at the end of paragraph (c)(2), by removing paragraph (c)(3), and by redesignating paragraph (c)(4) as paragraph (c)(3).

5. Section 803.10 is amended by revising the heading and paragraph (a)(2), and by adding paragraph (b) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

(a) * * *

(2) User facilities must submit annual reports as described in § 803.33.

(b) Importers must submit MDR reports of individual adverse events within 30 days after the importer becomes aware of an MDR reportable event as described in § 803.3. Importers must submit reports of device-related deaths or serious injuries to FDA and to the manufacturer and reports of malfunctions to the manufacturer.

* * * * *

§ 803.11 [Amended]

6. Section 803.11 *Obtaining the forms* is amended in the first sentence by adding the word '', importers,'' after the phrase ''User facilities''.

7. Section 803.12 is amended by revising paragraph (b) to read as follows:

§ 803.12 Where to submit reports.

* * * * *

(b) Each report and its envelope shall be specifically identified, e.g., ''User Facility Report,'' ''Annual Report,'' ''Importer Report,'' ''Manufacturer Report,'' ''5–Day Report,'' ''Baseline Report,'' etc.

* * * * *

§ 803.17 [Amended]

8. Section 803.17 *Written MDR procedures* is amended in the introductory text by adding the word '', importers,'' after the phrase ''User facilities''.

9. Section 803.18 is amended by revising the heading, the first sentence of paragraphs (a) and (b)(1) introductory text, paragraphs (b)(1)(ii) and (b)(2), and the second sentence of paragraph (c), and by adding paragraph (d) to read as follows:

§ 803.18 Files and distributor records.

(a) User facilities, importers, and manufacturers shall establish and maintain MDR event files. * * *

(b)(1) For purposes of this part, ''MDR event files'' are written or electronic files maintained by user facilities, importers, and manufacturers. * * *

* * * * *

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (*e.g.,* an importer, distributor, or manufacturer).

(2) User facilities, importers, and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) * * * Manufacturers and importers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. * * *

(d)(1) A device distributor shall establish and maintain device complaint records containing any incident information, including any written, electronic, or oral communication, either received by or generated by the firm, that alleges deficiencies related to the identity (*e.g.,* labeling), quality, durability, reliability, safety, effectiveness, or performance of a device. Information regarding the evaluation of the allegations, if any, shall also be maintained in the incident record. Device incident records shall be prominently identified as such and shall be filed by device, and may be maintained in written or electronic form. Files maintained in electronic form must be backed up.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the record.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

* * * * *

§ 803.19 [Amended]

10. Section 803.19 *Exemptions, variances, and alternative reporting requirements* is amended by adding in paragraphs (b) and (c) the word '', importers,'' before the phrase ''or user facility'', and by adding in paragraph (c) a comma after the word ''variance''.

11. Section 803.20 is amended by revising the last sentence of the introductory text of paragraph (a), paragraph (a)(1), and the first sentence of paragraph (a)(2), and by adding paragraph (b)(2) to read as follows:

§ 803.20 How to report.

(a) * * * The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device, and the ''initial reporter'' (*i.e.,* the first person or entity that submitted the information to the user facility, manufacturer, or importer).

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers.

* * *

(b) * * *

(2) Importers are required to submit death and serious injury reports to FDA and the device manufacturer and submit malfunction reports to the manufacturer only:

(i) Within 30 days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury.

(ii) Within 30 days of receiving information that a device marketed by the importer has malfunctioned and that such a device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.22 [Amended]

12. Section 803.22 *When not to file* is amended by adding in paragraphs (a) and (b)(1) the word '', importer,'' after the word ''facility'' and in paragraph (b)(2) by adding the phrase ''or importer'' after the word ''manufacturer'' each time it appears and by adding the phrase ''or imported'' after the word ''manufactured'' each time it appears.

§ 803.33 [Amended]

13. Section 803.33 *Semiannual reports* is amended by revising the heading to read ''Annual reports''; in the introductory text of paragraph (a) by removing the phrase ''(for reports made July through December) and by July 1 (for reports made January through June)''; in the introductory text of paragraph (a) and paragraphs (a)(5), (a)(7) introductory text, and (c) by removing the word ''semiannual'' wherever it appears and adding in its place the word ''annual''; in paragraph (a)(1) by revising the reference ''§ 803.3(dd)'' to ''§ 803.3(ee)''; in paragraph (a)(2) by removing the phrase ''and period, *e.g.,* January through June or July through December'' and in paragraph (a)(7)(vi) by adding the word ''importer,'' after the word ''distributor,''.

14. Subpart D, consisting of §§ 803.40 and 803.42, is added to read as follows:

Subpart D—Importer Reporting Requirements

Sec.

§ 803.40 Individual adverse event reporting requirements; importers.

(a) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.42 on FDA form 3500A as soon as practicable, but not later than 30 days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b) An importer shall submit to the manufacturer a report containing information required by § 803.42 on FDA form 3500A, as soon as practicable, but not later than 30 days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the importer's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.42 Individual adverse event report data elements.

Individual medical device importer reports shall contain the following information, in so far as the information is known or should be known to the importer, as described in § 803.40, which corresponds to the format of FDA Form 3500A:

(a) Patient information (Block A) shall contain the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Block B) shall contain the following:

(1) Adverse event or product problem;

(2) Outcomes attributed to the adverse event, that is:

(i) Death;

(ii) Life threatening injury or illness;

(iii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iv) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem to include a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Other relevant patient history including preexisting medical conditions.

(c) Device information (Block D) shall contain the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to the manufacturer, and if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not list products that were used to treat the event.)

(d) Initial reporter information (Block E) shall contain the following:

(1) Name, address, and phone number of the reporter who initially provided information to the user facility, manufacturer, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to FDA, if known.

(e) Importer information (Block F) shall contain the following:

(1) Whether reporter is an importer;

(2) Importer report number;

(3) Importer address;

(4) Contact person;

(5) Contact person's telephone number;

(6) Date the importer became aware of the event (month, day, year);

(7) Type of report (initial or followup (if followup, include report number of initial report));

(8) Date of the importer report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to FDA ''Coding Manual For Form 3500A'');

(11) Whether a report was sent to FDA and the date it was sent (month, day, year);

(12) Location, where event occurred;

(13) Whether a report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address; if available.

§ 803.57 [Removed]

15. Section 803.57 *Annual certification* is removed.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

16. Part 804 is removed.

Dated: August 6, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1785 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8864]

RIN 1545–AV87; 1545–AT97

Substantiation of Business Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary Income Tax Regulations that provide rules for the substantiation of certain business expenses under sections 62 and 274 of the Internal Revenue Code (Code). Individuals and other taxpayers who claim or reimburse certain business expenses will be affected by these regulations.

DATES: *Effective date.* These regulations are effective January 26, 2000.

Date of Applicability. For date of applicability, see §§ 1.62–2(m) and 1.274–5(m).

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–0771. Responses to this collection of information are required in order to deduct certain business expenses or exclude from income certain reimbursed business expenses of employees.

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 control number.

The estimated annual burden per respondent or recordkeeper varies from 10 minutes to 20 hours, depending on individual circumstances, with an estimated average of 1.3 hours.

Comments concerning the accuracy of this burden estimate and suggestions or reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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.

Background

On November 6, 1985, the IRS published in the **Federal Register** (50 FR 46006) temporary regulations (TD 8061) adding § 1.274–5T regarding substantiation of expenses with documentary evidence under section 274(d) of the Code. A notice of proposed rulemaking (LR–145–84, 1985–2 C.B. 809) cross-referencing the temporary regulations was published in the **Federal Register** (50 FR 46087) for the same day. The notice of proposed rulemaking invited comments on only those portions of the temporary regulations under § 1.274–5T that amended § 1.274–5 (now designated § 1.274–5A) to reflect contemporaneous legislation.

On March 25, 1997, the IRS published in the **Federal Register** (62 FR 13988) temporary regulations (TD 8715) amending paragraphs (c)(2)(iii)(B) and (f)(4) of § 1.274–5T. The amendments raised the receipt threshold from $25 to $75 and authorized the Commissioner to prescribe rules modifying the substantiation requirements for an adequate accounting by an employee to an employer. Under the amendment, the Commissioner could publish rules defining the circumstances (including the use of specified internal controls) under which an employee may make an adequate accounting to his employer by submitting an expense account alone, without the necessity of submitting documentary evidence (such as receipts). A notice of proposed rulemaking (REG–209785–95, 1997–1 C.B. 753) cross-referencing the temporary regulations was published in the **Federal Register** (62 FR 14051) for the same day.

On October 1, 1998, the IRS published a notice of proposed rulemaking (REG–122488–97, 1998–42 I.R.B. 19) in the **Federal Register** (63 FR 52660), proposing amendments to the Income Tax Regulations (26 CFR part 1) under sections 62(c) and 274(d) of the Code regarding substantiation of expenses using mileage and per diem rates. Specifically, the amendments removed the limitation in § 1.274(d)–1(a)(3) that provides that mileage allowances prescribed in rules by the Commissioner are available only to the owner of a vehicle. On that date the IRS also published temporary Income Tax Regulations (TD 8784, 1998–42 I.R.B. 4) under section 62(c) and 274(d) of the Code in the **Federal Register** (63 FR 52600), relating to the substantiation of expenses under a reimbursement or other expense allowance arrangement.

Comments were received in response to the 1985 proposed regulations, and a public hearing was held on March 3, 1986. Few of the written comments, and none of the comments at the hearing, relate to the provisions in this Treasury Decision. Written comments were also received with respect to the 1997 proposed regulations, but no public hearing was requested or held. No comments were received, and no hearings were requested or held, with respect to the 1998 proposed regulations.

Summary and Discussion of Comments

This Treasury Decision incorporates the suggestions made in the written comments with some exceptions. With respect to the 1985 regulations, one commentator suggested that the definition of an adequate accounting in § 1.274–5T(f)(4), in the case of automobile expense reimbursements, should be satisfied by a reimbursement based on data on the type of automobile and local operating and fixed costs. Although this suggestion has not been specifically adopted in the final regulations, the standard mileage rate revenue procedure provides for this type of substantiation. See, e.g., section 8 of Rev. Proc. 98–63, 1998–52 I.R.B. 25.

Another commentator suggested, inter alia, (1) adding exceptions to the documentary evidence requirements under § 1.274–5T(c)(2)(iii) and (2) providing that the Commissioner, in establishing a meal allowance under § 1.274–5T(j), may allow a specific dollar allowance per meal. These suggestions are not adopted because the intent of the regulations is to give the Commissioner the discretion to make these practical decisions.

Similarly, with respect to the 1997 regulations, commentators made suggestions regarding the specific content of the guidance to be issued under the proposed regulations at § 1.274–5(f)(4). We did not incorporate these suggestions because the regulations are designed to describe appropriate published guidance of general applicability, not the specific

provisions of such guidance. However, all of the comments will be taken into consideration by the Commissioner in issuing published guidance.

Explanation of Provisions

This Treasury Decision adopts the revision to § 1.62–2(e)(2) proposed in REG–122488–97, with minor changes. This Treasury Decision also adopts §§ 1.274–5(c)(2)(iii), (f)(4), (g), (j), and (m) as proposed by LR–216–84, modified by REG–209785–95 and REG-122488–97, and removes and reserves the corresponding provisions in § 1.274–5T. Finally, this Treasury Decision adopts the proposal in REG–122488–97 to remove §§ 1.62–2T, 1.274(d)–1, and 1.274(d)–1T.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Sections 1.274–5(c)(2)(iii) and (f) were originally proposed by a notice of proposed rulemaking (LR–145–84) that was issued on November 6, 1985. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply with respect to those collections of information. With respect to the collection of information in § 1.274–5(c)(iii)(B) as proposed by REG–209785–95 on March 25, 1997, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, by increasing the receipt threshold from $25 to $75, these regulations reduce the existing recordkeeping requirements of taxpayers, including small entities. The regulations do not otherwise significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the IRS submitted the notices of proposed rulemaking preceding these regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final and temporary regulations is Edwin B. Cleverdon, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.274–5 also issued under 26 U.S.C. 274(d). * * *

PAR. 2. Section 1.62–2 is amended by:

1. Revising paragraph (e)(2).

2. Removing the last two sentences of paragraph (m).

3. Adding a sentence to the end of paragraph (m).

The revision and addition read as follows:

§ 1.62–2 Reimbursement and other expense allowance arrangements.

* * * * *

(e) * * *

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See § 1.274–5. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, § 1.274–5(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, § 1.274–5(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See § 1.274–5(g), however, which grants the Commissioner authority to prescribe rules permitting the amount of certain expenses to be deemed substantiated to the payor (in lieu of substantiating the actual amount of such expenses) by means of per diem or mileage rates for travel away from home or transportation expenses. See also § 1.274–5(j)(1), which grants the Commissioner the authority to establish a method under which a taxpayer may use a specified amount for meals while traveling away from home in lieu of substantiating the actual cost of meals, and § 1.274–5(j)(2), which grants the Commissioner the authority to establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274–5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

* * * * *

(m) * * * Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred after December 31, 1997.

§ 1.62–2T [Removed]

Par. 3. Section 1.62–2T is removed.

Par. 4. Section 1.274–5 is added to read as follows:

§ 1.274–5 Substantiation requirements.

(a) and (b) [Reserved]. For further guidance, see § 1.274–5T(a) and (b).

(c) *Rules of substantiation*—(1) [Reserved]. For further guidance, see § 1.274–5T(c)(1).

(2) *Substantiation by adequate records*—(i) and (ii) [Reserved]. For further guidance, see § 1.274–5T(c)(2)(i) and (ii).

(iii) *Documentary evidence*—(A) Except as provided in paragraph (c)(2)(iii)(B), documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support an expenditure, is required for—

(*1*) Any expenditure for lodging while traveling away from home, and

(*2*) Any other expenditure of $75 or more except, for transportation charges, documentary evidence will not be required if not readily available.

(B) The Commissioner, in his or her discretion, may prescribe rules waiving the documentary evidence requirements in circumstances where it is

impracticable for such documentary evidence to be required. Ordinarily, documentary evidence will be considered adequate to support an expenditure if it includes sufficient information to establish the amount, date, place, and the essential character of the expenditure. For example, a hotel receipt is sufficient to support expenditures for business travel if it contains the following: name, location, date, and separate amounts for charges such as for lodging, meals, and telephone. Similarly, a restaurant receipt is sufficient to support an expenditure for a business meal if it contains the following: name and location of the restaurant, the date and amount of the expenditure, the number of people served, and, if a charge is made for an item other than meals and beverages, an indication that such is the case. A document may be indicative of only one (or part of one) element of an expenditure. Thus, a cancelled check, together with a bill from the payee, ordinarily would establish the element of cost. In contrast, a cancelled check drawn payable to a named payee would not by itself support a business expenditure without other evidence showing that the check was used for a certain business purpose.

(iv) and (v) [Reserved]. For further guidance, see § 1.274–5T(c)(2)(iv) and (v).

(d) and (e) [Reserved]. For further guidance, see § 1.274–5T(d) and (e).

(f) *Reporting and substantiation of expenses of certain employees for travel, entertainment, gifts, and with respect to listed property*—(1) through (3) [Reserved]. For further guidance, see § 1.274–5T(f)(1) through (3).

(4) *Definition of an adequate accounting to the employer*—(i) *In general.* For purposes of this paragraph (f) an *adequate accounting* means the submission to the employer of an account book, diary, log, statement of expense, trip sheet, or similar record maintained by the employee in which the information as to each element of an expenditure or use (described in paragraph (b) of this section) is recorded at or near the time of the expenditure or use, together with supporting documentary evidence, in a manner that conforms to all the adequate records requirements of paragraph (c)(2) of this section. An adequate accounting requires that the employee account for all amounts received from the employer during the taxable year as advances, reimbursements, or allowances (including those charged directly or indirectly to the employer through credit cards or otherwise) for travel, entertainment, gifts, and the use of listed property. The methods of substantiation allowed under paragraph (c)(4) or (c)(5) of this section also will be considered to be an adequate accounting if the employer accepts an employee's substantiation and establishes that such substantiation meets the requirements of paragraph (c)(4) or (c)(5). For purposes of an adequate accounting, the method of substantiation allowed under paragraph (c)(3) of this section will not be permitted.

(ii) *Procedures for adequate accounting without documentary evidence.* The Commissioner may, in his or her discretion, prescribe rules under which an employee may make an adequate accounting to an employer by submitting an account book, log, diary, etc., alone, without submitting documentary evidence.

(iii) *Employer.* For purposes of this section, the term *employer* includes an agent of the employer or a third party payor who pays amounts to an employee under a reimbursement or other expense allowance arrangement.

(5) [Reserved]. For further guidance, see § 1.274–5T(f)(5).

(g) *Substantiation by reimbursement arrangements or per diem, mileage, and other traveling allowances*—(1) *In general.* The Commissioner may, in his or her discretion, prescribe rules in pronouncements of general applicability under which allowances for expenses described in paragraph (g)(2) of this section will, if in accordance with reasonable business practice, be regarded as equivalent to substantiation by adequate records or other sufficient evidence, for purposes of paragraph (c) of this section, of the amount of the expenses and as satisfying, with respect to the amount of the expenses, the requirements of an adequate accounting to the employer for purposes of paragraph (f)(4) of this section. If the total allowance received exceeds the deductible expenses paid or incurred by the employee, such excess must be reported as income on the employee's return. See paragraph (j)(1) of this section relating to the substantiation of meal expenses while traveling away from home, and paragraph (j)(2) of this section relating to the substantiation of expenses for the business use of a vehicle.

(2) *Allowances for expenses described.* An allowance for expenses is described in this paragraph (g)(2) if it is a—

(i) Reimbursement arrangement covering ordinary and necessary expenses of traveling away from home (exclusive of transportation expenses to and from destination);

(ii) Per diem allowance providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination); or

(iii) Mileage allowance providing for ordinary and necessary expenses of local transportation and transportation to, from, and at the destination while traveling away from home.

(h) [Reserved]. For further guidance, see § 1.274–5T(h).

(i) [Reserved].

(j) *Authority for optional methods of computing certain expenses*—(1) *Meal expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for meals while traveling away from home in lieu of substantiating the actual cost of meals. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel. See paragraphs (b)(2) and (c) of this section.

(2) *Use of mileage rates for vehicle expenses.* The Commissioner may establish a method under which a taxpayer may use mileage rates to determine the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home in lieu of substantiating the actual costs. The method may include appropriate limitations and conditions in order to reflect more accurately vehicle expenses over the entire period of usage. The taxpayer will not be relieved of the requirement to substantiate the amount of each business use (i.e., the business mileage), or the time and business purpose of each use. See paragraphs (b)(2) and (c) of this section.

(k) and (l) [Reserved]. For further guidance, see § 1.274–5T(k) and (l).

(m) *Effective date.* This section applies to expenses paid or incurred after December 31, 1997.

PAR. 5. Section 1.274–5T is amended by:

1. Revising paragraphs (c)(2)(iii), (f)(4), (g) and (j).

2. Adding a sentence at the end of paragraph (m).

The revision and addition read as follows:

§ 1.274–5T Substantiation requirements.

* * * * *

(c) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.274–5(c)(2)(iii).

* * * * *

(f) * * *

(4) [Reserved]. For further guidance, see § 1.274–5(f)(4).

* * * * *

(g) [Reserved]. For further guidance, see § 1.274–5(g).

* * * * *

(j) [Reserved]. For further guidance, see § 1.274–5(j).

* * * * *

(m) *Effective date.* * * * Paragraphs (c)(2)(iii), (f)(4), (g), and (j) of this section apply to expenses paid or incurred after December 31, 1997.

§ 1.274(d)–1 [REMOVED]

Par. 6. Section 1.274(d)–1 is removed.

§ 1.274(d)–1T [REMOVED]

Par. 7. Section 1.274(d)-1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (b) is amended by adding the following entry to the table:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
1.274–5	1545–0771
* * * * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 28, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1382 Filed 1–21–00; 3:06 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 207

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations which establish restricted areas at Bonneville Lock and Dam, at McNary Lock and Dam, at Ice Harbor Lock and Dam, at Lower Monumental Lock and Dam, at Little Goose Lock and Dam, and at Lower Granite Lock and Dam on the Columbia and Snake Rivers, Oregon and Washington. The Corps is making adjustments in the restricted area boundaries to provide a greater margin of vessel safety from sudden dangerous currents, turbulence, and whirlpools caused by the operation of spillways, electrical generators, and navigation locks. Vessels, except Government vessels, are prohibited within the restricted areas. The restricted areas upstream and downstream from the spillways can be extremely dangerous should vessels be in the restricted area when water is released. The electrical generators and spillway gates are remotely controlled from Portland and not operated by personnel at the facility. The equipment can be activated within seconds, creating very dangerous water currents, turbulence, and whirlpools. Operation of the navigation lock also creates a very dangerous condition in the downstream area. Water that is discharged from the lock discharge culvert can create waves up to 6 feet high. Therefore, the downstream areas are reclassified from ''hazardous'' to ''restricted'' at McNary Lock and Dam, Columbia River, River Mile 292.0; at Ice Harbor Lock and Dam, Snake River, River Mile 9.7; at Lower Monumental Lock and Dam, Snake River, River Mile 41.6; at Little Goose Lock and Dam, Snake River, River Mile 70.3; and at Lower Granite Lock and Dam, Snake River, River Mile 107.5. A change in alignment of the upstream restricted areas at Bonneville Lock and Dam, at McNary Lock and Dam and at Ice Harbor Lock and Dam are to provide additional protection for the boating public.

DATES: The final rule is effective February 25, 2000.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OD, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. James Hilton, Dredging and Navigation Branch, CECW–OD at (202) 761–8830, or Jim Runkles, (541) 374–8344, ext. 254 for Bonneville Lock and Dam or Ms. Ann Glassley at (509) 527–7115 for McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite Locks and Dams.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on Wednesday, October 13, 1999, vol. 64, No. 197, pages 55441—55442. Pursuant to its authorities in Sections 4, 7, and 28 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations in 33 CFR Part 207.718(v), (w)(1), (w)(4), (w)(5), (w)(6), (w)(7), and (w)(8). Paragraph (v) is deleted since the area below the dams at McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite is changed from ''hazardous'' to ''restricted''. Signs mark the restricted areas. The redesignation of the downstream area from ''hazardous'' to ''restricted'' is to prohibit vessels, except government vessels, from entering the area. Under a hazardous designation, vessels could enter at their own risk. An increase in fishing vessels into the hazardous area in pursuit of adult salmon and steelhead is of great concern, since the electrical generators and spillway gates are operated remotely from Portland. There are no personnel at the dam to warn boaters of an immediate release of water. Paragraph (w)(1) is amended to provide an additional margin of safety for recreational boaters operating above and below Bonneville Lock and Dam during the discharge of water from the Juvenile Bypass System outfall structures. Paragraphs (w)(4), (w)(5), (w)(6), (w)(7), and (w)(8) are amended to provide a greater margin of safety for recreational

boaters from sudden dangerous currents, turbulence and whirlpools caused by the operation of spillways, electrical generators, and navigation locks. Operation of the electrical generators and spillway gates are remotely controlled from Portland, Oregon. The regulation governing the navigation locks and approach channels, Columbia and Snake Rivers, Washington and Oregon, 33 CFR 207.718 was adopted on January 23, 1978 (43 FR 3115). The last amendment to 33 CFR 207.718 was April 4, 1991 (56 FR 13765). This final rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this final rule would not have a significant impact on small business entities.

Comments on the Proposed Rule

No comments were received to the October 13, 1999, **Federal Register** notice of proposed rulemaking. However, there was an error in the proposed upstream restricted area boundaries at Ice Harbor Lock and Dam, Lower Monumental Lock and Dam, and Little Goose Lock and Dam. The Corps Walla Walla District issued a public notice on December 16, 1988, regarding proposed changes to restricted area boundaries at McNary, Ice Harbor, Lower Monumental and Little Goose Locks and Dams. However, the restricted area boundaries in the October 13, 1999, **Federal Register** contained errors in direction and distances from the December 16, 1988 public notice. The revised restricted upstream boundary at Ice Harbor Dam provides a greater distance from the dam to protect boaters. The revised restricted upstream boundary at Lower Monumental Dam shifts the north boundary waterward to place the boat ramp outside the restricted area. The upstream restricted area boundary line at Little Goose Dam that runs on an angle of 345° 26′ true for a distance of 620 yards to the north shore is amended to delete the distance, since the shore line is subject to change by lake level fluctuations and natural causes.

List of Subjects in 33 CFR Part 207

Navigation (water), Water transportation, Vessels.

For reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations is amended, as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.718 is amended by removing and reserving paragraph (v) and revising paragraphs (w)(1), (w)(4), (w)(5), (w)(6), (w)(7), and (w)(8) to read as follows:

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oreg. and Wash.

* * * * *

(v) [Reserved]

(w) * * *

(1) *At Bonneville Lock and Dam.* The water restricted to all vessels, except Government vessels, are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above the first powerhouse, spillway, and second powerhouse (excluding the new navigation lock channel) and all waters below the first powerhouse, spillway, second powerhouse, and old navigation lock. This is bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the river and running in a South 65 degrees West direction a distance of approximately 2,100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington shore. Signs designate the restricted areas. The approach channel to the new navigation lock is outside the restricted area.

* * * * *

(4) *At McNary Lock and Dam.* The waters restricted to all vessels, except to Government vessels, are described as all waters commencing at the upstream end of the Oregon fish ladder thence running in the direction of 39° 28′ true for a distance of 540 yards; thence 7° 49′ true for a distance of 1,078 yards; thence 277° 10′ for a distance of 468 yards to the upstream end of the navigation lock guidewall. The downstream limits commence at the downstream end of the navigation lock guidewall thence to the south (Oregon) shore at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(5) *At Ice Harbor Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters within a distance of about 800 yards upstream of the dam lying south of the navigation lock and bound by the line commencing at the upstream end of the guidewall, and running a direction of 91° 10′ true for a distance of 575 yards; thence 162° 45′ to the south shore, a distance of about 385 yards. The downstream limits commencing at the downstream end of the guidewall; thence to the south shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(6) *At Lower Monumental Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 46° 25′ true for a distance of 344 yards; thence 326° 19′ true for a distance of 362 yards; thence 243° 19′ true for a distance of 218 yards; thence 275° 59′ true to the north shore a distance of about 290 yards. The downstream limits commence at the downstream end of the navigation lock guidewall; thence to the north shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(7) *At Little Goose Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 60° 37′ true for a distance of 676 yards; thence 345° 26′ true to the north shore. The downstream limits commence 512 yards downstream and at right angles to the axis of the dam on the south shore; thence parallel to the axis of the dam to the north shore. Signs designate the restricted areas.

(8) *At Lower Granite Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall thence running in the direction of 131° 31′ true for a distance of 608 yards; thence 210° 46′ true to the south shore, a distance of about 259 yards. The downstream limits commence at the downstream end of navigation lock guidewall; thence to the south shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

* * * * *

Dated: January 18, 2000.

Approved:

Eric R. Potts,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 00–1631 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–AR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 87–1a; FRL–6527–8]

Approval of Post-1996 Rate of Progress Plan: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving the Lake and Porter Counties, Indiana Post-1996 Rate of Progress (ROP) Plan, including a 1990 inventory adjustment, as revisions to the State Implementation Plan (SIP). The Indiana Department of Environmental Management (IDEM) submitted the Post-1996 ROP Plan on December 17, 1997, with a supplemental submission on January 22, 1998.

The control strategies in the plan are designed to reduce volatile organic compounds (VOC) emissions in Lake and Porter Counties by 9 percent (%) from 1990 baseline levels. The Clean Air Act (the Act) requires that these reductions occur by November 15, 1999. The Post-1996 ROP Plan is designed to reduce VOC emissions in Lake and Porter Counties by at least 77,366 pounds (lbs) per day; from a projected 369,387 lbs/day to 292,021 pounds/day.

VOC emissions combine with oxides of nitrogen in the atmosphere to form ground-level ozone, a pollutant which can cause inflammation of the lungs, decrease lung capacity, and aggravate asthma. The purpose of this **Federal Register** action is to explain what EPA is approving and to discuss the rationale for today's approval.

DATES: This rule is effective on March 27, 2000, unless EPA receives relevant adverse written comments by February 25, 2000. If EPA receives adverse comment, it 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 addressed 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 SIP revision request for this direct final rule are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Ryan Bahr at (312) 353–4366, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, at (312) 353–4366.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'', are used we mean EPA. This Supplementary Information section is organized as follows:

I. General Information on this Approval

What is EPA approving?

In today's action, EPA is approving the Lake and Porter Counties, Indiana Post-1996 Rate of Progress (ROP) Plan, including a 1990 inventory adjustment, as a revision to the State Implementation Plan (SIP). IDEM submitted these items on December 17, 1997, and January 22, 1998.

Why is EPA approving this submittal?

The Post-1996 ROP Plan satisfies the requirements of the Clean Air Act. Specifically, the plan:

- Revises the 1990 base year emission inventory,
- Identifies control measures to achieve a projected 9% VOC emission reduction in Lake and Porter Counties,
- Documents the 9% reductions to occur by November 15, 1999, and,
- Identifies a 1999 mobile source emissions budget for VOC.

EPA found that the Post-1996 ROP Plan contains 77,660 pounds VOC/day of emission reductions in Lake and Porter Counties that are creditable. This exceeds the required reduction of 77,366 pounds VOC/day. The Act requires these reductions because VOC emissions combine with oxides of nitrogen in the atmosphere to form ground-level ozone, a pollutant which can cause inflammation of the lungs, decrease lung capacity, and aggravate asthma.

Section 182(c)(2)(B) of the Act requires submittal of a demonstration that the SIP will result in a 9% emission reduction by November 15, 1999. This 9% needs to be in addition to the emission reduction requirement for a 15% reduction by November 15, 1996. Indiana submitted the demonstration as part of the Post-1996 ROP Plan.

Who is affected by this action?

The Post-1996 ROP Plan refers to various emission control regulations which IDEM estimates will achieve the 9% emission reductions for Lake and Porter Counties. The regulations, both Federal and State, impact a wide variety of industries and businesses. For the most part, these regulations have already been implemented. All of them have already been approved into the SIP or promulgated by EPA. Today's approval does not establish any new requirements. The plan identifies and documents how existing SIP and Federal regulations achieve the necessary 9% emission reductions. The plan, by documenting emission reductions, demonstrates the progress being made toward cleaner air for the

people that live and work in Lake and Porter Counties, Indiana.

II. Background on IDEM Submittal

What is a Post-1996 Rate Of Progress (ROP) Plan?

A Post-1996 ROP Plan documents the control strategies a State is implementing to reduce emissions of ozone precursors by 9% from 1990 baseline emissions. Section 182(b)(1) of the Act requires States to develop these Post-1996 ROP Plans for ozone nonattainment areas which have been classified as serious and above. Lake and Porter Counties are classified as severe nonattainment for ozone. To be approvable, a State must show that the 9% emission reduction will occur by November 15, 1999.

The Plan is called a ''Post-1996'' ROP Plan because the Act also requires that by November 15, 1996, the States implement control strategies achieving 15% emission reduction for ozone nonattainment areas classified as moderate and above. The Post-1996 ROP Plan continues the 3% per year reductions from November 16, 1996, through November 15, 1999.

What pollutants does the IDEM Post-1996 ROP Plan Reduce?

The IDEM Post-1996 ROP Plan identifies VOC control strategies. VOC emissions combine with oxides of nitrogen in the atmosphere to form ground-level ozone. Ozone can cause inflammation of the lungs, decrease lung capacity, and aggravate asthma.

What geographic area does the IDEM Post-1996 ROP Plan affect?

IDEM's Post-1996 ROP Plan is applicable to the severe ozone nonattainment area of Lake and Porter Counties, Indiana. Lake and Porter Counties are part of the Chicago-Gary-Lake County ozone nonattainment area, which is classified as severe nonattainment for ozone.

Why did IDEM submit a SIP revision request for the Post-1996 ROP Plan?

Lake and Porter Counties are classified as severe nonattainment for ozone. For that reason, section 182(c)(2)(B) of the Act requires that these areas reduce emissions of ozone precursors by 3% per year, and that the State submit a Post-1996 ROP Plan to identify and document those reductions.

What information did IDEM submit in its request?

On December 17, 1997, Indiana submitted to EPA the Lake and Porter Counties Indiana Post-1996 ROP Plan. EPA found this submittal to be complete in a letter to IDEM dated December 30, 1997.

The ROP Plan contains documentation and control strategies for both the 9% reduction requirement and 3% contingency measures, as well as a revision to the 1990 VOC emission inventory. The contingency measures include agreed orders for Keil Chemical and United States Steel Gary Works. EPA will address the contingency measures and these agreed orders in a subsequent rulemaking action.

The submittal also contains a mobile source emission budget for VOC. IDEM supplemented its submittal on January 22, 1998, to clearly identify the mobile source emission budget.

What Mobile Source Budget did IDEM identify in the Post-1996 ROP Plan?

IDEM supplemented its submittal on January 22, 1998 to clearly identify a 1999 mobile source budget for VOCs of 40,897 pounds VOC per summer day, as contained in Table 16 of the Post-1996 ROP Plan.

What action has EPA previously taken on the mobile source budget?

At the time that EPA received this submittal, the transportation rules (62 FR 43780) required EPA to review mobile source budgets within 45 days of submittal. After receiving the supplemental submittal regarding the budget on January 22, 1998, EPA completed that review of the budget. EPA found the 1999 VOC budget of 40,897 pounds VOC per summer day adequate in a February 2, 1998, letter. Since that time, Lake and Porter Counties have been required to restrict their 1999 modeled mobile source VOC emissions to below that budget.

What public review opportunities did IDEM provide for the Post-1996 ROP Plan?

On October 13, 1997, IDEM published a notice of public hearing for the Post-1996 ROP Plan and opened a public comment period through December 1, 1997. IDEM held a public hearing on the proposed ROP Plan on November 13, 1997. The submittal summarizes the public comments and IDEM's responses to those comments.

What prior action has EPA taken on Rate of Progress Plans for Lake and Porter Counties Indiana?

On April 3, 1997, EPA proposed approval and solicited public comment on Indiana's 15% ROP plan. EPA finalized approval of the 15% ROP plan on July 18, 1997 (62 FR 38457). The 15% ROP plan was designed to reduce VOC emissions in Lake and Porter Counties by 68,242 pounds per day.

III. Content of IDEM Submittal

What changes did IDEM make to the 1990 VOC emission inventory in this submission?

IDEM has revised the 1990 Lake and Porter Counties base year VOC emissions inventory. The revision increases the base year VOC emissions inventory by 195,349 pounds/day, a 46% increase. The resulting 1990 VOC emissions inventory for Lake and Porter Counties is 620,070 pounds/day (typical weekday emissions during the period of June through August).

Both the 15 percent ROP plan and the Post-1996 ROP Plan depend on the level of the 1990 base year VOC emissions. EPA has encouraged the States to update the 1990 base year emissions as needed, and to make appropriate changes in ROP plans. EPA recognizes that the base year emissions estimates (or the estimated emissions for any other year) are not fixed over time and that new data can improve these estimates. Such is the case in this ROP submittal.

In July and August 1993, the United States Steel Corporation (US Steel) commented to IDEM on the 1990 base year inventory. US Steel stated that the 1990 base year emissions inventory underestimated VOC emissions from the US Steel coke oven by-product recovery plant. When IDEM received these comments, it was in the final stages of preparing the base year emissions inventory and did not have time to further investigate US Steel's claim prior to submitting the inventory to the EPA.

EPA approved IDEM's 1990 base year emissions inventory for Lake and Porter Counties on January 4, 1995 (60 FR 375). The rulemaking suggested that IDEM give further consideration to the comments of US Steel and acknowledged that IDEM would need extra time to consider relevant data prior to amending the base year emissions inventory, if warranted.

After taking a more detailed look at the emissions from the coke oven by-product recovery sector, IDEM concluded that it was appropriate to revise the 1990 base year emissions inventory. Both State rule 326 IAC 14–9 and the Federal National Emission Standard for Hazardous Air Pollutants (NESHAP) regulate benzene emissions from coke oven by-product recovery plants. The rules were implemented in 1991 and not 1990, as assumed in the original 1990 base year emissions inventory. IDEM is now correcting this

assumption, resulting in the need to increase the 1990 base year emissions.

To accurately reflect the overall emissions from this category, IDEM increased the resolution of the emissions inventory for the emissions from coke oven by-product recovery plants. These enhanced emission calculations provided the context for the compliance data from US Steel, allowing IDEM to more accurately determine the correct 1990 emissions level.

IDEM concluded that the 1990 base year emissions were significantly higher than the base year inventory originally adopted and has requested that the 1990 SIP base year inventory be adjusted accordingly.

What control strategies did IDEM implement to achieve reductions?

The Post-1996 ROP Plan Control Strategies and their Emission Reductions.

Control Strategies	Emission Reductions (Pounds VOC/day)	Date of EPA Promulgation or Approval
Coke Oven By-Product Recovery Plant NESHAP (40 CFR Part 61 Subpart L).	55,371	Promulgated September 14, 1989 (54 FR 38044) Amended September 19, 1991 (56 FR 47404)
Inland Steel Coke Battery Shutdowns (326 IAC 6–1–10.1(k)(5)) (40 CFR 52.770(c)(99)).	6,666	Approved June 15, 1995 (60 FR 31412)
Reformulated Gasoline Use in Small Engines (40 CFR Part 80).	575	Promulgated February 16, 1994 (59 FR 7716)
New Small Engine Emission Standards (40 CFR Part 90)	6,034	Promulgated July 3, 1995 (60 FR 34581)
Volatile Organic Liquid Storage Reasonably Available Control Technology (326 IAC 8–9) (40 CFR 52.770(c)(111)).	2,700	Approved January 17, 1997 (62 FR 2593)
Coke Oven NESHAP (40 CFR Part 63 Subpart L)	6,314	Promulgated October 27, 1993 (58 FR 57911)
Total Emission Reduction	77,660	

In determining what control measures a State can use in its Post-1996 ROP Plan strategy, emission reductions from control measures are creditable to the extent they occur before November 15, 1999. The General Preamble for the Implementation of Title I of the Act also interprets and clarifies the Act's requirements for crediting control strategies. The Preamble provides that all credited emission reductions must be real, permanent, and enforceable, and discusses how these criteria can be met with specific strategies (57 FR 13497). EPA has explained these requirements in more detail in the guidance documents listed in this **Federal Register**.

The Post-1996 ROP Plan Control Strategies; Emission Reduction Calculations

To achieve the required 9% VOC emission reduction requirement, IDEM reviewed and chose the following emission control measures.

Coke Oven By-Product Recovery Plants NESHAP. This Federal NESHAP at 40 CFR Part 61, Subpart L, applies to all furnace and foundry coke oven by-product recovery plants. The NESHAP requires the use of gas blanketing to control emissions from tar intercepting sumps, process vessels, and naphthalene processing operations. The NESHAP also covers controlling emissions from equipment leaks, coolers, and light oil processes.

As noted above, Indiana promulgated rule 326 IAC 14–9 in 1988, covering some of the emissions for this source category. It was scheduled for implementation in 1990, but was actually implemented in 1991. EPA approved the rule as part of the State's Reasonably Available Control Technology (RACT) SIP on September 17, 1992 (57 FR 42889).

IDEM has requested credit in its Post-1996 ROP Plan for reductions from coke oven by-product recovery plants that went beyond rule 326 IAC 14–9. EPA believes this approach is consistent with EPA guidance which provides that only the emission reductions from NESHAPS that go beyond RACT rules in existence before November 15, 1990, can be credited in ROP plans. Based on this guidance, the State determined the emission reduction resulting from the NESHAP that went beyond that of rule 326 IAC 14–9.

IDEM has determined that the NESHAP has resulted in additional VOC emission reductions of 45,300 pounds/day at the US Steel mill and 10,071 pounds/day at the Bethlehem Steel mill, for a total additional VOC emission reduction of 55,371 pounds/day.

Furthermore, EPA has determined that while the reductions from 326 IAC 14–9 are not creditable toward the 9% reduction requirements, they should be removed from the baseline emission inventory before determining the required reductions for the ROP purposes. This approach acknowledges that while these reductions were not actually made before 1990, they are also not part of the 1990 Act's ROP process.

Inland Steel Coke Oven Battery Shutdowns. Indiana rule 326 IAC 6–1–10.1(k)(5) (adopted by the State in March 1993), required Inland Steel Flat Products to shut down coke batteries numbers 6 through 11 before November 1996. Inland Steel no longer holds a valid operating permit for these coke batteries. In addition, based on a consent decree between the State and Inland Steel, Inland Steel cannot bank the VOC emission reductions from these coke battery closures for future use. IDEM considers them to be permanent emission reductions.

IDEM notes that, since it found emissions from the coke oven by-products recovery to be higher than was originally reported in the 1990 base year inventory, additional emission reduction credits are available. Note that IDEM increased the 1990 base year VOC emissions in this source category, as discussed above.

To calculate the emission reduction credit for this source, IDEM had to take into account emission reduction credits already applied in prior submittals, in particular in the 15 percent ROP plan, to avoid double counting. IDEM increased the resolution of the emissions inventory for this source so that it could consider the impacts of the previously implemented rule 326 IAC 14–9 and previously credited controls.

IDEM found that it could credit an additional VOC emission reduction (beyond that credited in the 15 percent ROP plan) of 6,666 pounds/day to the Inland Steel coke oven battery shutdowns. The IDEM submittal credits 6,288 pounds/day to the 9 percent ROP emission reduction requirement, and

378 pounds/day to the 3 percent contingency requirement. However, EPA is today crediting the full 6,666 pounds VOC/day toward the 9% requirement. This excess reduction accounts for discrepancies identified in other sections of IDEM's submittal.

IDEM had credited a VOC emission reduction of 3,984 pounds/day for this source closure in prior air quality plan submittals, and is not taking credit for that portion in the 9 percent post-1996 ROP Plan.

Effects of Reformulated Gasoline on Small, Non-Road Engines. The emission reduction for this source category applies to 2-stroke and 4-stroke non-road engines. The emission reduction results from the implementation of the Act's requirement for the use of reformulated gasoline in ozone nonattainment areas classified as severe and above.

To determine the emission reduction credit, IDEM used August 1993 guidance from EPA to calculate the emission reduction by engine type. The emission reductions only apply to exhaust and evaporative emissions. Based on the EPA guidance, IDEM did not account for emission reductions resulting from changes in refueling emissions.

Tables 1 and 17 of the Post-1996 ROP Plan, document a VOC emission reduction of 1,292 pounds/day for this source category. However, the detailed emissions summary contained in Appendix C–1 of the submittal calculates a VOC emission reduction of 575 pounds per day. The emission reductions achieved by the use of reformulated gasoline in small, non-road engines and the regulation for new small engines need to be calculated together, since both affect small engines. A calculation error was made when disaggregating the results of that analysis. In Tables 1 and 7, 715 pounds VOC/day were inadvertently shifted from the emissions listed for the ''new small engine standards'' to the emissions reduction credited for ''effects of reformulated gasoline on small, non-road engines.'' This approval corrects that error and credits the effects of reformulated gasoline on small, non-road engines with a 575 pound VOC/day emission reduction.

When this error was made, an additional 2 pounds VOC/day were added to the effects of reformulated gasoline on small, non-road engines. This 2 pound deficit will be made up by the excess credit for the Inland Steel coke oven battery shutdowns. In IDEM's submittal, it only took credit for Inland Steel coke oven battery shutdowns for 6,288 out of a total 6,666 pounds VOC/day. This approval more than makes up the 2 pound deficit by applying all 6,666 pounds VOC/day to the Post-1996 9% reduction.

New Small Engine Standards. IDEM calculated the impact of new federal standards codified at 40 CFR Part 90 for small engines by following November 28, 1994, EPA guidance titled ''Future Non-road Emission Reduction Credits for Court-Ordered Non-Road Standards''. IDEM determined the emission impacts for each equipment type and engine type in Lake and Porter Counties. Appendix C–2 of the Post-1996 ROP Plan submittal specifies the emission reduction for each equipment and engine type combination by county. IDEM calculated emission impacts after removing the impacts of reformulated gasoline, as specified in the EPA guidance.

IDEM determined, as demonstrated in Appendix C–2 of the Post-1996 ROP Plan, that the small engine standards would reduce 1999 emissions by 6,034 pounds VOC/day. However, tables 1 and 18 of the Post-1996 ROP submittal document a VOC emission reduction from this control category equaling only 5,319 pounds/day.

As noted above, IDEM inadvertently shifted 715 pounds VOC/day to reformulated gasoline when listing the measures in the tables. EPA has made this correction to the tables in today's **Federal Register**. The new small engine standard is being credited at 6,034 pounds VOC/day reduction.

Volatile Organic Liquid Storage Reasonably Available Control Technology. The VOC impact of this control is based on the calculated impacts of State rule 326 IAC 8–9, adopted by the Indiana Air Pollution Control Board on May 3, 1995 and approved by EPA on January 17, 1997 (62 FR 2593). This rule became effective in Indiana on October 1, 1995, and was to be phased in over several years, with most sources needing to comply by May 1, 1996. The rule applies to storage vessels with a capacity greater than 39,000 gallons that are used to store volatile organic liquids with a maximum true vapor pressure of 1.52 pounds per square inch or greater.

The rule requires the use of internal floating roofs with vapor-mounted primary and secondary seals with controlled fittings in fixed roof tanks. It also requires the replacement of vapor-mounted primary seals with liquid-mounted primary seals or shoe seals and installation of secondary seals with controlled fittings in external floating roof tanks.

The emission reduction total for this control measure assumes a VOC emission reduction of 96 percent in fixed roof tanks, 29 percent in internal floating roof tanks, and 65 percent for external floating roof tanks. The emission reduction calculation also assumes an 80 percent rule effectiveness level.

All external floating roof tanks have to comply with the State rule by May 1, 1996. Existing internal floating roof tanks have up to 10 years to comply with the rule. IDEM only claims an emission reduction credit for external floating roof tanks and fixed roof tanks.

This approval credits a VOC emission reduction of 2,700 pounds VOC/day for this source control measure in 1999, documented in Table 21 and Appendix C–5 of the Post-1996 ROP submittal.

Coke Oven Batteries NESHAP. The coke oven batteries NESHAP, promulgated by EPA on October 27, 1993, and codified at 40 CFR Part 63, Subpart L, applies to all coke oven batteries in existence prior to December 4, 1992, including by-product and nonrecovery coke oven batteries, and to all new coke oven batteries constructed on or after December 4, 1992. The rule mandates emission limits and/or controls for door leaks, topside port leaks, offtake system leaks, visible emissions, and charging systems.

IDEM calculated the emission reductions based on EPA guidance in the preamble to the 1993 NESHAP (58 FR 57898). Appendix C–4 of the ROP Plan submittal documents in detail the individual source calculations used by IDEM to calculate the total VOC emission reduction. This approval credits a total VOC reduction of 6,314 pounds/day.

IV. EPA Analysis of IDEM Submittal

What guidance documents and requirements apply to the Post-1996 ROP Plan submittal?

EPA has developed a number of guidelines specifically addressing the review of Post-1996 ROP Plans. In addition, EPA guidelines concerning the review of 15 percent ROP plans (1996 ROP plans) address many issues of relevance in the review of the Post-1996 ROP Plans. These documents address such topics as: (1) the requirements of the Act; (2) development of baseline and target emission estimates; (3) emission inventory projection procedures; and, (4) recommended emission reduction levels for various emission control measures.

Rate-of-Progress Plan Policy References

1. *Clean Air Act* (42 U.S.C. 7401–7626), as amended November 15, 1990.

2. *Procedures for Preparing Emissions Projections,* EPA–450/4–91–019, Environmental Protection Agency, July 1991.

3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' Proposed Rule, **Federal Register**, 57 FR 13498, April 16, 1992.

4. Memorandum, ''November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories,'' from J. David Mobley, Edwin L. Meyer, and G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

5. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans,* EPA–452/R–92–005, October 1992.

6. Memorandum, ''Quantification of Rule Effectiveness Improvements,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

7. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans,* EPA–452/R–93–002, March 1993.

8. Memorandum, ''Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans','' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

9. Memorandum, ''15 Percent Rate-of-Progress Plans,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

10. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act,* EPA–452/R–93–007, May 1993.

11. Memorandum, ''Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures,'' from G.T. Helms, Ozone/Carbon Monoxide Programs Branch, and Susan Wyatt, Chemicals and Petroleum Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 6, 1993.

12. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans,* EPA–452/R–93–005, June 1993.

13. Memorandum, ''Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, July 28, 1993.

14. Memorandum, ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 13, 1993.

15. Memorandum, ''Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

16. Memorandum, ''VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase I Reformulated Gasoline,'' from Phil Lorang, Office of Mobile Sources, Environmental Protection Agency, August 18, 1993.

17. Memorandum, ''Guidance on Issues Related to 15 Percent Rate-of-Progress Plans,'' from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

18. Memorandum, ''Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings,'' from John S. Seitz, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

19. Memorandum, ''Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans,'' from John S. Seitz, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

20. Memorandum, ''Clarification of Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

21. Memorandum, ''Review and Rulemaking on 15 Percent Rate-of-Progress Plans,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

22. Memorandum, ''Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 29, 1993.

23. Memorandum, ''Rate-of-Progress Plan Guidance on the 15 Percent Calculations,'' from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

24. Memorandum, ''Clarification of Issues Regarding the Contingency Measures That are Due November 15, 1993, for Moderate and Above Ozone Nonattainment Areas,'' from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

25. Memorandum, ''Credit for 15 Percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

26. Memorandum, ''Transmittal of NO_x Substitution Guidance, '' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

27. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration,* EPA–452/R–93–015, January 1994.

28. Memorandum, ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, January 21, 1994.

29. Memorandum, ''Post-1996 Rate-of-Progress Plan Guidance for Ozone Nonattainment Areas,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, January 24, 1994.

30. Memorandum, ''Guidance on Projection of Nonroad Inventories to Future Years,'' from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

31. Memorandum, ''Post-1996 Rate-of Progress Plan Guidance for Ozone Nonattainment Areas,'' from G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, February 22, 1994.

32. Memorandum, ''Clarification of Policy for Nitrogen Oxides (NO_x) Substitution,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 5, 1994.

33. Memorandum, ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

34. Memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

35. Memorandum, ''Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations,'' from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

36. Memorandum, ''Future Nonroad Emission Reduction Credits for Locomotives,'' from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

37. Memorandum, ''Ozone Attainment Demonstration,'' from Mary Nichols, Assistant Administrator, Office of Air and Radiation, Environmental Protection Agency, March 2, 1995.

38. Memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

39. Memorandum, ''Fifteen Percent Rate-of-Progress Plans—Additional Guidance,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

40. Memorandum, ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards,

Environmental Protection Agency, June 22, 1995.

41. Memorandum, ''Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

Why Was the 1996 15 Percent ROP Target Level for Lake and Porter Counties Recalculated?

The 15% plan target emission level needed to be recalculated because IDEM has revised the 1990 VOC emission inventory. The Post-1996 ROP Plan uses the 15% plan's 1996 target level as a starting point. IDEM calculated the 1999 target emission level directly from this 1996 target level. IDEM then subtracted the 1999 target emission level from the projected 1999 inventory to determine how much VOC emission reductions are needed. In this manner, instead of revisiting the 15% plan, the Post-1996 ROP Plan has to provide for ample reductions to meet the 1999 target.

How Was the 1996 Target Emission Level for Lake and Porter Counties Recalculated?

Recalculation of 1996 target emission level	Pounds VOC/day
1990 Total VOC Emissions	620,070
1990 Rate-Of-Progress Emissions (A) (Anthropogenic Emissions Only)	577,190
1990–1996 Non-creditable Reductions	187,591
1990 Adjusted Base Year Emissions (B) (1990 ROP Emissions minus non-creditable reductions)	389,599
15 Percent of 1990 Adjusted Base Year Emissions (C)	58,440
1996 Target Emission Level (B)–(C)	331,159

1990–1996 Non-Creditable Reductions: Coke Oven By-Product Recovery=129,913 pounds VOC/day; Federal Motor Vehicle Control Program (FMVCP)=59,950 pounds VOC/day; Reid Vapor Pressure (RVP)=728 pounds VOC/day.

To determine the 1990 adjusted base year inventory, IDEM started with the 1990 base year emission inventory approved by EPA on January 4, 1995 (60 FR 375), which EPA found met the requirements of sections 172(c)(3) and 182(a)(1) of the Act for Lake and Porter Counties. IDEM then revised the inventory as described earlier. The revision resulted in total 1990 adjusted base year emissions of 620,070 pounds VOC/day. IDEM subtracted biogenic emissions and emissions from outside Lake and Porter Counties from the 1990 base year inventory to determine that the 1990 ROP inventory level is 577,190 pounds VOC/day.

IDEM used EPA's Mobile Source Emissions Model (MOBILE) 5a to calculate the emission reductions from the pre-1990 FMVCP and 1990 RVP regulations; IDEM then subtracted these reductions and the emission reductions from coke oven by-product recovery plants from the 1990 ROP inventory level to find the 1990 adjusted base year inventory level of 389,599 lbs VOC/day.

IDEM then multiplied the adjusted base year emissions by 15% resulting in a required reduction of 58,440 pounds VOC/day. To obtain the 1996 emission target level, IDEM subtracted the 15% required emission reductions from the 1990 ROP emissions resulting in a 1996 target level of 331,159 pounds VOC/day.

How Was the Post-1996 ROP Plan Required Emission Reduction Calculated?

9% ROP Summary For Lake and Porter Counties

Calculation of reduction needs by 1999	Pounds VOC/day
1990 Lake and Porter Counties Total VOC Emissions (A)	620,070
1990 Rate-Of-Progress Emissions (B) (Anthropogenic Emissions Only)	577,190
1990–1999 Non-creditable Reductions	224,841
1990 Adjusted Base Year Emissions (C) (1990 ROP Emissions minus Noncreditable Reductions)	352,349
9 Percent of 1990 Adjusted Base Year Emissions (D)	31,711
FMVCP Fleet Turnover Correction (The difference between 1996 and 1999 FMVCP implementation)	7,427
1996 Emission Target Level	331,159
1999 Target Emission Level (E) (1996 Emissions Target Level minus 9% and fleet turnover)	292,021
Projected 1999 VOC Emissions (F) (1990 Adjusted Base Year Emissions plus Growth Factors)	369,387
ROP Reduction Requirement to achieve 9 percent net of growth (G) (1999 Projected Emission (F) minus 1999 Target Level (E))	77,366

1990–1999 Non-Creditable Reductions: Coke Oven By-Product Recovery=159,736 pounds VOC/day; Federal Motor Vehicle Control Program (FMVCP)=64,377 pounds VOC/day; Reid Vapor Pressure (RVP)=728 pounds VOC/day.

(A) IDEM revised the ''1990 Lake and Porter Counties total VOC emissions'', as described earlier, resulting in 1990 emissions of 620,070 pounds VOC/day.

9% ROP Summary For Lake and Porter Counties

Calculation of reduction needs by 1999	Pounds VOC/day

(B) IDEM determined the ''1990 ROP emissions'' (577,190 pounds VOC/day) by subtracting from the 1990 total emissions the biogenic emissions and emissions outside of the nonattainment area.

(C) IDEM calculated the ''1990 adjusted base year emissions'' as 351,440 pounds VOC/day by subtracting from the 1990 ROP inventory any non creditable emission reductions which are projected to occur between 1990 and 1999. EPA slightly revised IDEM's calculations when a computational error was found. The corrected ''1990 adjusted base year emissions'' are 352,349 pounds VOC/day. This correction results in a higher adjusted base year and affects each of the remaining computations, except for the 1999 projected VOC emissions.

(D) EPA calculated the ''9% of adjusted base year emissions'' as 31,711 pounds VOC/day by multiplying the 1990 adjusted base year inventory by 9%.

(E) EPA calculated the ''1999 emissions target level'' as 292,021 pounds VOC/day by subtracting from the 1996 emission target level inventory the FMVCP fleet turnover correction and the 9% reduction requirement.

(F) IDEM calculated the ''1999 projected VOC emissions'' as 369,387 pounds VOC/day. In the Post-1996 ROP Plan, IDEM projected the point, area, and non-road mobile source emission inventories using either source-supplied data, population forecasts, historical data, or, the U.S. Department of Commerce Bureau of Economic Analysis (BEA) regional growth data. IDEM included in the Post-1996 ROP Plan the growth factors used together with documentation for the assumptions made.

IDEM projected the on-road mobile source emission inventory using MOBILE5a. IDEM calculated these growth estimates in a manner consistent with EPA's guidance documents.

(G) EPA then determined the ''ROP reduction requirement to achieve 9 percent net of growth'' as 77,366 pounds VOC/day by subtracting the 1999 emission target level from the 1999 projected VOC emissions.

Why is EPA approving the Post-1996 ROP Plan submittal?

The Post-1996 ROP Plan satisfies the requirements of the Clean Air Act. Specifically, the plan:

- Revises the 1990 base year emission inventory,
- Identifies control measures to achieve a projected 9% VOC emissions reductions in Lake and Porter Counties,
- Documents the 9% reductions to occur by November 15, 1999, and,
- Identifies a 1999 mobile source emissions budget for VOC.

The Post-1996 ROP Plan projects reductions in VOC emissions in Lake and Porter Counties of 77,660 pounds VOC/day. This exceeds the required reduction of 77,366 pounds VOC/day. Indiana can use the excess reduction of 294 pounds VOC/day toward meeting future ROP emission reduction requirements.

Section 182(c)(2)(B) of the Act requires submittal of a demonstration that the SIP will result in a 9% emission reduction by November 15, 1999. This 9% needs to be in addition to the emission reduction requirement for a 15% reduction by November 15, 1996. Indiana submitted the demonstration as part of the Post-1996 ROP Plan.

V. Final Rulemaking Action

EPA approves Indiana's Post-1996 ROP Plan, including the 1990 inventory adjustments, submitted December 17, 1997, and January 22, 1998, for Lake and Porter Counties, as a revision to the SIP. Final approval of the Post-1996 ROP Plan also approves the 1999 mobile source emission budget of 40,897 pounds VOC per summer day.

This action will be effective on March 27, 2000.

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, 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 25, 2000. Should the Agency receive such comments, it will publish a withdrawal 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, this action will be effective on March 27, 2000.

VI. Administrative Requirements

A. Executive Order 12866

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

B. 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under E.O. 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, E.O. 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 E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 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 E.O. 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 E.O. 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 E.O. 13132, 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 E.O. 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 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 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.

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 27, 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, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: January 6, 2000.

Francis X. Lyons,

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. 7401–7671q.

2. Section 52.777 is amended by adding paragraph (u) to read as follows:

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbon).

* * * * *

(u) On December 17, 1997, and January 22, 1998, Indiana submitted the Post-1996 rate-of-progress plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 182(c)(2)(B) of the Clean Air Act, as amended in 1990. The plan contains a 1999 mobile source vehicle emission budget for volatile organic compounds of 40,897 pounds per average summer day.

[FR Doc. 00–1558 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–043–1–9905a; and GA–045–1–9906a; FRL–6528–9]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Enhanced Inspection and Maintenance Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted, in two separate packages, by the State of Georgia in November and December of 1998. Both submittals request revisions to the enhanced Inspection and Maintenance (I/M) program, in accordance with the requirements of Section 110 of the Clean Air Act as amended in 1990 (CAA) and section 348 of the National Highway Systems Designation Act (NHSDA). In total, these submittals request revisions to modify the following sections: ''Emission Inspection Procedures,'' ''Inspection Station Requirements,'' ''Certificate of Emissions Inspection,'' ''Definitions,'' ''Waivers,'' ''Inspection Fees,'' and the ''Accelerated Simulated Mode (ASM) Start-up Standards'' found in Appendix H of the Enhanced I/M Test Equipment, Procedures, and Specifications—Phase II.

DATES: This direct final rule is effective March 27, 2000 without further notice, unless EPA receives adverse comment by February 25, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Dale Aspy (November 1998 submittal) or Lynorae Benjamin (December 1998 submittal) at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Dale Aspy, 404/562–9041; Lynorae Benjamin, 404/562–9040.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 1220, Atlanta, Georgia 30354. 404/363–7000.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at 404/562–9041 or Lynorae Benjamin at 404/562–9040.

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final Action, provide additional information concerning the revisions to the enhanced I/M portion of the Georgia SIP.

I. Background

On December 13, 1996 (61 FR 65496), EPA published a notice of proposed rulemaking (NPR) for the State of Georgia. The NPR proposed conditional interim approval of Georgia's enhanced I/M program, for the Atlanta ozone nonattainment area, submitted to satisfy the applicable requirements of both the CAA and the NHSDA. The formal SIP revision, submitted on March 27, 1996, by the Georgia Environmental Protection Division (EPD) of the Department of Natural Resources, contained plans to implement the program in two phases. The plan for Phase 1 described how the program would be expanded from the four counties in the previous program to the 13 ozone nonattainment counties. Phase 1 implemented a two speed idle (TSI) test and a gas cap pressure check for all vehicles that were subject to an emissions inspection. The implementation of Phase 2 required an ASM test for vehicles older than six model years, while newer vehicles continued to be subject to the TSI test. Phase 2 also implemented minor changes in software. The program was conditionally approved because it lacked ASM test method specifications and a requirement to implement the program in a timely manner. Subsequently, on January 31, 1997, the EPD submitted the necessary ASM test method, satisfying one of the conditions for program approval. These specifications were largely based upon EPA's specifications for the ASM test. Therefore, on August 11, 1997 (62 FR 42916) EPA noted the test specifications condition of the December 13, 1996, proposal was met and removed, and final interim approval was given to the program.

Additional detailed discussion of the Georgia enhanced I/M SIP and the rationale for EPA's action are explained in the proposal notice published December 13, 1996, reference above and in the final interim approval notice published on August 11, 1997 (62 FR 42916), and will not be restated here.

II. Analysis of State's Submittal

On November 4, 1998, EPD submitted a revision to the SIP that modified portions of the enhanced I/M program. Specifically, the submission deleted emergency rules contained in the ''Emission Inspection Procedures,'' and the ''Inspection Station Requirements'' for the Georgia I/M regulation. These emergency rules were adopted when the ASM portion of the program could not be implemented on schedule due to delays in the delivery of hardware and software. The emergency rules allowed stations to check vehicle emissions on the TSI through December 1, 1998. However, the required hardware and software were delivered prior to the expected date, allowing ASM testing to start earlier than anticipated. Additionally, the ''Certificate of Emissions Inspection'' was changed to require a telephone number for tracking purposes. The details of the modifications requested in the November 1998 submittal are discussed below.

Emission Inspection Procedures

Paragraph 7 in the Emission Inspection Procedures (Georgia Rule 391–3–20–.04) is deleted entirely, removing the provision that allowed older vehicles to be tested with the TSI procedure.

Inspection Station Requirements

Sections (1)(a)(3) and (1)(c)(3) are deleted from Georgia Rule 391–3–20–.09, thereby removing the provisions that allowed certain newer vehicle only inspection stations or fleet inspection stations to test older vehicles with the TSI procedure.

Certificate of Emissions Inspection

A new subparagraph (2)(b) of Georgia Rule 391–3–20–.13 completely replaces the former subparagraph, requiring a telephone number in addition to the other information previously required on the repair information form.

On December 4, 1998, the EPD submitted additional revisions to the SIP to modify portions of the enhanced I/M program. Specifically, the submission updates the I/M Test Manual definition so that it refers to the version of the *Enhanced I/M Test Equipment, Procedures and Specifications—Phase II* dated September 10, 1998; extends the $200 waiver expenditure requirement through December 31, 1999; and extends the $25.00 fixed test fee and the issuing of an administrative fee credit of $6.30 to an inspection station owner for each ASM test performed through June 30, 1999. The details of the modifications requested in the December 1998 submittal are discussed below.

Definitions

The State updated the I/M Test Manual definition so that it refers to the most recent version of the Enhanced I/M Test Equipment, Procedures and Specifications—Phase II dated September 10, 1998.

Waivers

The revision extended the $200 waiver expenditure requirement through December 31, 1999. This extension reflects a change in EPA's policy which will mandate the $450 wavier amount (plus an increase for inflation) to be implemented after January 1, 2000. EPA is approving the State's request to extend the deadline for the full implementation of the cost waiver including the CPI adjustment until January 1, 2000. This allows the State to complete one full cycle of testing with the $200 cost waiver and also allows the State to complete a full cycle of testing with the full $450 plus the annual CPI adjustment made retroactively to 1989 cost waiver before January 1, 2002, which is the performance standard modeling evaluation date. EPA believes, that consistent with its interpretation that the start dates and evaluation dates have been extended by approximately two years by the NHSDA, the full implementation of the waiver can also be extended by two years.

Inspection Fees

The revision extended the $25.00 fixed test fee and the issuing of an administrative fee credit of $6.30 to an inspection station owner for each ASM test performed through June 30, 1999.

ASM-Start-Up

The revision delayed implementation of the final emissions standards for the dynamometer tests through December 31, 1999. This allows one year of ASM testing at the phase in cut points. The delay in implementing the final ASM standards was caused by the delay in starting Phase 2, the ASM portion, of the Georgia I/M program due to ASM hardware and software delivery problems.

III. Final Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revisions of

the Federally approved SIP for conformance with provisions of the CAA and EPA guidance and has determined that these requests conform to those requirements. Therefore, this action revises the State's enhanced I/M program as presented in the Analysis of State's Submittal section of this document.

The EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should adverse comments be filed. This rule will be effective March 27, 2000 without further notice unless the Agency receives adverse comments by February 25, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 27, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 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 E.O. 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 E.O. 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 E.O. 13132. Thus, the requirements of section 6 of the E.O. 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 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, E.O. 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act 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 government 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 CAA 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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 costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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**. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 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

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 5, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

2. In § 52.570(c), the table is amended by revising the entry for 391–3–20 to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	* *	*	*
391–3–20	Enhanced Inspection and Maintenance.	November 12, 1998	March 27, 2000.	
* *	*	* *	*	*

[FR Doc. 00–1834 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97–217, DA 00–99]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration.

SUMMARY: This item gives notice of the filing of petitions for reconsideration and sets out the dates for oppositions and replies to those oppositions.

DATES: Oppositions to the petitions for reconsideration are due February 10, 2000. Replies to oppositions are due February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: The Commission has received six petitions for further reconsideration of its *Report and Order on Reconsideration,* MM Docket, 97–217, 64 FR 63727. The petitions were filed by: Wireless Cable Association International, *et al.*; the Catholic Television Network; BellSouth; the Archdiocese of Los Angeles; IPWireless, Inc.; and the National ITFS Association. In the *Report and Order on Reconsideration*, the Commission made changes to the rules adopted in previous order which enabled licensees in the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') to engage in fixed two-way transmissions. The petitioners seek further changes. The full text of the petitions for further reconsideration are available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street,

SW Room CY–B402, Washington, DC 20554.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1797 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 88–57; FCC 99–405]

Review of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of the Commission's Rules Filed by the Electronic Industries Association

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Commission rules regarding the establishment of quality standards for inside wiring, to promote the availability of quality telecommunications facilities that will not frustrate consumer access to existing and advanced telecommunications services. The Commission also affirms the gold or gold equivalent standard for connectors, and decline to designate schools and hospitals as multiunit structures, establish requirements compelling notification of building owners and tenants with respect to additional network protectors, and establish a standard time period for carrier responses to customer requests for inside wiring information.

DATES: Effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Vincent Paladini, Attorney, 202/418–2332, Fax 202/418–2345, TTY 202/418–2224, *vpaladin@fcc.gov,* Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (Third R&O) in CC Docket No. 88– 57; FCC 99–405, adopted December 21, 1999, and released January 10, 2000. The complete text of this Third R&O is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., Suite CY–B400, Washington, D.C. 20554, phone (202) 314–3070.

Synopsis of the Third Report and Order

1. In the Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of § 68.213 of the Commission's Rules filed by the Electronic Industries Association, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88–57, RM–5643, 12 FCC Rcd 11897, (1997), 62 FR 36476, the Commission included a Second Further Notice of Proposed Rulemaking requesting comment on proposed modifications to the demarcation point rule, BICSI's proposed enhanced wire quality standards, and the gold or gold equivalent standard.

2. In this Order, we adopt material standards for copper, twisted pair wire used in new, simple inside wiring installations. We introduce this standard into our regulations to identify a ''standard industry practice.'' This action will benefit consumers and small businesses using legacy voice telecommunications services as well as those seeking to access broadband services. We envision that consumers may enforce this rule by prosecuting claims against builders and contractors that have utilized inferior wiring in new construction. For example, an aggrieved consumer or building owner, beset by problems caused by poor quality inside wire, may make a civil claim against a builder or contractor for breach of implied warranty of merchantability or fitness for a particular purpose. We also anticipate that telecommunications wiring standards will be adopted by building industry organizations, and reflected in local building codes.

3. Poor-quality, non-twisted pair inside wiring can cause network harm in the form of ''cross-talk,'' resulting in a loss of privacy, interference with digital transmission, and disruption of telephone conversations. The presence of inferior wiring may not be immediately apparent to homeowners and homebuyers, since the potential for future problems may be difficult to detect. Once a problem is discovered, homeowners often must rewire the affected premises to rectify the problem, at a cost substantially higher than the cost of initially installing quality inside wiring.

4. A primary cause of this troublesome situation is that the simple inside wiring market does not function correctly because homebuyers are shut out of the inside wire selection process. Building contractors and developers generally select telecommunications wire long before the homebuyer has entered the picture, and that this situation allows builders to prioritize lower cost over quality when purchasing wire to be used for simple inside wiring. When homeowners become aware of the problem, such as when they attempt to install an additional line or experience audible cross-talk, it is often too late to seek reparations from the builder or contractor. Thus, since the ''purchasing entity,'' in this case the builder or contractor, is not held accountable for the problems caused by its least-cost-based decision, market forces will not protect the consumer's interest in quality inside wiring. Thus, we establish a wire quality standard to correct this market malfunction.

5. We find that it is in the public interest to adopt inside wiring quality standards in order to protect consumers and the PSTN from such harm. Thus, we amend § 68.213(c) of the Commission's rules to adopt enhanced wire quality standards for simple inside wiring. Specifically, we require that copper inside wiring installed July 24, 2000, shall be, at a minimum, solid, 24 gauge or thicker, twisted pairs, marked to indicate compliance with the electrical specifications for Category 3, as defined in the ANSI/EIA/TIA Building Wiring Standards. Inside wiring material exceeding the minimum requirements specified in § 68.213(c) as amended by this Order may be used and should be marked to indicate those characteristics. We note that the inside wiring requirements that we adopt in this Order apply only to copper conductor specifically installed for use as simple inside wiring for telecommunications service. We define the scope of this regulation specifically to avoid precluding the development and use of other transmission media that may be able to function in place of twisted pair copper inside wiring.

6. We emphasize that the inside wiring quality standards we adopt in this do not imply that inferior materials may be used instead of copper. Under § 68.108 of our rules, carriers are afforded certain self-help privileges

enabling them to take necessary actions to protect the PSTN, such as temporarily disconnecting or refusing to connect inside wiring or CPE that is likely to cause harm to the PSTN.

7. We also establish that wire must be marked for compliance with the Commission's inside wiring quality standard at one-foot intervals, as described in § 68.213(c)(3) of our rules as amended by this Third Report and Order. The new standard will become effective July 24, 2000.

8. The growing market presence of communications equipment and technology, such as facsimiles, modems, and ISDN, that have low tolerance for transmission anomalies and interference, such as those caused by poor connectors, indicates that the public interest will be served by supporting industry initiatives that pursue improved telecommunications transmission quality. Furthermore, the current standard has been in place for more than a year and has not been the subject of any criticism. Consequently, we decline to further revise § 68.500 with respect to the gold or gold equivalent standard.

9. In the 1997 Rulemaking, the Commission proposed that schools, hospitals and other similar facilities be considered multiunit premises under the Commission's demarcation point rule. Nothing in the record evinces difficulties in this area or indicates that case-by-case resolution of this issue would be problematic. Thus, we decline to determine that schools, hospitals, and similar facilities should be classified as multiunit premises under the demarcation point rule.

10. In the 1997 *Rulemaking*, the Commission requested comment identifying a reasonable time for telephone companies to respond to requests for disclosure of information regarding the wiring layout of buildings, including information about inside wiring on the customer's side of the demarcation point. The record does not indicate uncertainty or problems in this area. Thus, we decline to identify a specific period as reasonable for the purposes of customer requests for inside wiring information.

Paperwork Reduction Act

11. It appears that record keeping would not increase or significantly decrease as a result of the Commission's affirmation and clarification of the demarcation point definition gold and gold equivalence standard, and modification of the inside wiring material requirements rules. No new skills are necessary to comply with this amendment by telephone companies, wire maintenance and installation companies, and wire manufacturers.

Final Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act (RFA) the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Order on Reconsideration, Second Report and Order, and Second Notice of Proposed Rulemaking.* See 5 U.S.C. 603(a).

(1) Need For, and Objectives of, the Proposed Rules

13. The Commission, in compliance with section 1 and Title II of the Communications Act of 1934, as amended in the Telecommunications Act of 1996, promulgates rules in this *Third Report and Order* by amending § 68.213 of its rules to establish minimum standards for simple inside wiring to be connected to the public switched telecommunications network. This rule change will benefit consumers and small businesses by ensuring that telecommunications wiring in new installations will be capable of accommodating clear telecommunications and digital transmissions. Consumers and small businesses will also benefit from the decreased necessity for the expensive replacement of poor quality simple inside wiring, as may be required to accommodate extra lines for additional telephones, personal computers, fax machines, and ISDN or xDSL services. Furthermore, this rule change will staunch the increasing incidence of cross-talk and the risk of network harm associated with the installation of poor quality inside wiring.

(2) Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

14. We have reviewed the general comments to identify issues that may have significant economic impact on small businesses, and find that no issues were raised in direct response to the IRFA. Furthermore, all commenters addressing the issue of amending Part 68 our rules to provide enhanced standards for inside wiring supported the proposed amendment.

(3) Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of these SIC categories. We then discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules. Finally, we discuss the number of electrical contractors that may be affected by the proposed rules, and the extent to which they may be affected.

16. Consistent with our prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of ''small entity'' and ''small business concern.'' While such a company may have 1,500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field or operation or are not independently owner and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by the SBA as a small business concern.

17. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers and

resellers. It seems certain that some of those 3.497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this *Third Report and Order.*

18. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephony company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small businesses under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this *Third Report and Order.*

19. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appear to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Third Report and Order.*

20. *Manufacturers of Telecommunications Equipment.* The Commission has not developed a definition for small manufacturers of telecommunications terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661) which defines a small manufacturer as one having 1,000 or fewer employees. According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and seven had between 1,000 and 1,499 employees. Consequently, we estimate that there are fewer than 443 small manufacturers of telecommunications terminal equipment that may be affected by the decision and rules proposed in this *Third Report and Order.*

21. *Electrical Contractors.* Electrical Contractors in this category (SIC 1731) are primarily engaged in electrical work at the construction site. This category includes establishments engaged in the installation of telecommunication equipment, sound equipment, burglar alarms, fire alarms, and telephones. According to the 1997 Economic Census there are 61,414 electrical contractors. Of that number, 61,405 electrical contractors have fewer than 1000 employees, and 61,375 have fewer than 500 employees. Consequently, we estimate that up to 61,405 small electrical contractors may be affected by the decision and rules proposed in this *Third Report and Order.*

22. *Telecommunications Wiring Manufacturers.* Manufacturers in this category (SIC 3357B) are primarily engaged in manufacturing telephone and telegraph wire and cable. This category includes establishments engaged in the manufacture of inside wiring cable. According to the 1997 Economic Census there are 28 telephone and telegraph wire and cable manufacturers, of which 18 are involved in the manufacture of inside wiring cable. The Small Business Administration has determined that manufacturing establishments in this category with fewer than 750 employees qualify as small manufacturers. Consequently, we estimate that no more than 18 inside wiring cable manufacturers may be affected by the decision and rules proposed in this *Third Report and Order.*

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. *Reporting.* None.

24. *Recordkeeping.* It appears that recordkeeping would not increase or significantly decrease as a result of our affirmation and clarification of our demarcation point definition gold and gold equivalence standard, and modification of our inside wiring material requirements rules. We anticipate that no new skills are necessary to comply with this amendment by telephone companies, wire maintenance and installation companies, and wire manufacturers.

25. Other Compliance Requirements. None.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. We have considered the effect of enhanced wiring requirements on the building industry in general, and specifically with regard to the following entities: General Contractor, Single Family Houses (SIC 1521); General Contractor, Residential Buildings, Other than Single Family (SIC 1522); General Contractors, Nonresidential Buildings (SIC 1542), and Building Construction Trade Contractors, Electrical (SIC 1731), and find that these rule modifications will not cause significant negate impact. To the extant that enhanced wire quality standards for simple inside wiring may adversely affect small building contractor, it appears to be an insignificant cost in comparison to the value and public interest in the elimination of cross-talk interference to the service of third party customers that is directly attributable to the use of low-quality telephone inside wiring.

(6) Federal Rules that Overlap, Duplicate, or Conflict With These Rules

27. None.

Report to Congress

28. The Commission will include a copy of this Final Regulatory Flexibility Analysis, along with this Third Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**.

Ordering Clauses

29. Accordingly pursuant to the authority contained in Sections 1, 4(I) and (j), 11, 201–205, 218, 220, 256, and 405 of the Communications Act as amended, 47 U.S.C. sections 151, 154(I), 151(j), 161, 201–205 and 218, 220, 256, and 405, and 5 U.S.C. 552 and 553, this Third Report and Order and Order on Reconsideration *is adopted*, and part 68 of the Commission's Rules *is amended* as set forth. Sections 1, 4, 405, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 405 and 610, part 68 of the Commission's rules is amended as set forth.

30. That the rule amendments set forth *shall be effective* July 24, 2000.

List of Subjects in 47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Hearing aid compatibility, Incorporation by reference, Reporting and recordkeeping requirements, Telephone, Volume control.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 68 as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for part 68 continues to read as follows:

Authority: Sections 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

2. Section 68.213 is amended by revising paragraph (c) to read as follows:

§ 68.213 Installation of other than ''fully protected'' non-system simple customer premises wiring.

* * * * *

(c) Material requirements. (1) For new installations and modifications to existing installations, copper conductors shall be, at a minimum, solid, 24 gauge or larger, twisted pairs that comply with the electrical specifications for Category 3, as defined in the ANSI EIA/TIA Building Wiring Standards.

(2) Conductors shall have insulation with a 1500 Volt rms minimum breakdown rating. This rating shall be established by covering the jacket or sheath with at least 15 cm (6 inches) (measured linearly on the cable) of conductive foil, and establishing a potential difference between the foil and all of the individual conductors connected together, such potential difference gradually increased over a 30 second time period to 1500 Volts rms, 60 Hertz, then applied continuously for one minute. At no time during this 90 second time interval shall the current between these points exceed 10 milliamperes peak.

(3) All wire and connectors meeting the requirements set forth in paragraphs (c)(1) and (c)(2) shall be marked, in a manner visible to the consumer, with the symbol ''CAT 3'' or a symbol consisting of a ''C'' with a ''3'' contained within the ''C'' character, at intervals not to exceed one foot (12 inches) along the length of the wire.

* * * * *

[FR Doc. 00–1795 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Woundfin and Virgin River Chub

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for the Virgin River chub (*Gila seminuda*) and the woundfin (*Plagopterus argentissimus*) in accordance with the Endangered Species Act of 1973, as amended. The Virgin River chub and woundfin are listed as endangered. Both species occur within the area designated as critical habitat. The designation includes portions of the Virgin River in Utah, Arizona, and Nevada. We are designating 140.1 kilometers (km) (87.5 miles (mi)) of critical habitat for the woundfin (approximately 12.5 percent of its historical range) and the Virgin River chub (65.3 percent of its historical range). The majority of the land to be designated as critical habitat is under Federal ownership (57.7 percent) or private ownership (39.9 percent). This critical habitat designation includes portions of the mainstem Virgin River and its associated 100-year floodplain. Under section 7 of the Endangered Species Act (Act) of 1973, as amended, Federal agencies are required to ensure that their actions are not likely to destroy or adversely modify designated critical habitat. Section 4 of the Act required us to consider economic and other impacts prior to making this final decision on the size and scope of the designation.

EFFECTIVE DATE: February 25, 2000.

ADDRESSES: You may inspect the complete file for this rule, by appointment, during normal business hours at the office of the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Field Supervisor, Salt Lake City Field Office, at the above address, (801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The woundfin (*Plagopterus argentissimus*) and Virgin River chub (*Gila seminuda*) are currently listed as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). In the subsequent text, we refer to the woundfin and Virgin River chub as ''listed fishes.'' The Virgin River originates in south-central Utah, running in a southwest direction to northwestern Arizona, and southeastern Nevada for approximately 320 km (200 mi) before emptying into Lake Mead. Prior to the completion of Boulder (Hoover) Dam in 1935, the Muddy River in southeastern Nevada joined the Virgin River before the latter emptied into the Colorado River. These two rivers now flow separately into the Overton Arm of Lake Mead. The Virgin River chub and woundfin have declined in numbers due to the cumulative effects of dewatering from numerous diversion projects; proliferation of nonnative fishes; and alterations to natural flow, temperature, and sediment regimes.

Woundfin

Based on early records, the original range of the woundfin extended from near the junction of the Salt and Verde Rivers at Tempe, Arizona, to the mouth of the Gila River at Yuma, Arizona (Gilbert and Scofield 1898; Minckley 1973). Woundfin were also found in the mainstem Colorado River from Yuma (Jordan and Evermann 1896; Meek 1904; Follett 1961) upstream to the Virgin River in Nevada, Arizona, and Utah and into La Verkin Creek, a tributary of the Virgin River in Utah (Gilbert and

Scofield 1898; Snyder 1915; Miller and Hubbs 1960; Cross 1975). However, because no barriers or habitat considerations exist that would have precluded woundfin from existing further upstream in these rivers, we believe that the woundfin likely occurred further upstream in the Verde, Salt, and Gila Rivers in Arizona.

Except for the mainstem of the Virgin River, woundfin are extirpated from most of their historical range. Woundfin presently range from Pah Tempe Springs (also called La Verkin Springs) on the mainstem of the Virgin River and the lower portion of La Verkin Creek in Utah, downstream to Lake Mead. A single specimen was taken from the middle Muddy (Moapa) River, Clark County, Nevada, in the late 1960s. However, no additional specimens have been collected from that drainage since that time (Deacon and Bradley 1972).

Adult and juvenile woundfin inhabit runs and quiet waters adjacent to riffles with sand and sand/gravel substrates. Adults are generally found in habitats with water depths between 0.15 and 0.43 meters (m) (0.5 and 1.4 feet (ft)) with velocities between 0.24 and 0.49 meters per second (m/s) (0.8 and 1.6 feet per second (ft/s)). Juveniles select areas with slower and deeper water, while larvae are found in backwaters and stream margins which are often associated with growths of filamentous algae. Spawning takes place during the period of declining spring flows.

Virgin River Chub

The Virgin River chub was first described as a full species (*Gila seminuda*) in 1875 (Cope and Yarrow 1875). Later, Ellis (1914) considered this chub to be an intermediate between the roundtail chub (*G. robusta*) and bonytail chub (*G. elegans*), and reduced it to a subspecies (*G. robusta seminuda*) of the roundtail chub. The fish was believed to be restricted to the Virgin River between Hurricane, Utah, and its confluence with the Colorado River.

In a recent taxonomic study of the genus *Gila* using morphological and genetic characters, DeMarais *et al.* (1992) concluded that the prior treatment of the Virgin River chub as a subspecies of roundtail chub was inappropriate and arbitrary. The authors asserted that full species status (*Gila seminuda*) was warranted for the Virgin River chub, which likely arose through introgressive hybridization involving *G. robusta* and *G. elegans* (DeMarais *et al,* 1992). Moreover, DeMarais *et al.* (1992) concluded that the chub found in the Muddy (=Moapa) River, a Virgin River tributary, was also *G. seminuda,* although the Muddy River population was ''distinctive.'' Prior to this conclusion, this geographically isolated population of Virgin River chub was considered a separate, unnamed subspecies of roundtail chub (*G. robusta spp.*), and was referred to as the Moapa roundtail chub (Minckley 1973, Smith *et al.* 1977). We, along with the American Fisheries Society and American Society of Ichthyologists and Herpetologists Fish Names Committee (Mr. Joseph S. Nelson, American Fisheries Society, *in litt.* 1993) have accepted the taxonomic revisions of *Gila.*

In past candidate notices of review, we considered the Muddy River population of Virgin River chub to be a category 2 candidate species (December 30, 1982, 47 FR 58455; January 6, 1989, 54 FR 556; November 21, 1991, 56 FR 58804). At that time, category 2 candidate species were those species for which we had information indicating that listing may be appropriate, but did not have enough information on file to support issuance of a proposed rule to list. In our February 28, 1996, candidate notice of review (61 FR 7596), we discontinued the designation of category 2 candidates. The final rule listing the Virgin River chub as an endangered species (August 24, 1989; 54 FR 35305) specifically excluded the Muddy River population, because at the time it was classified as an undescribed subspecies. The Muddy River is not included in this final rule designating critical habitat for the Virgin River chub because at the time that the proposed critical habitat designation and economic analysis were prepared, we did not consider the Muddy River population to be listed. Therefore, in order to respond in a timely manner and make a final determination with regard to critical habitat for the Virgin River chub, this final rule encompasses only the mainstem Virgin River. A separate listing determination, which will include analyses on the status of the species and whether listing the fish in the Muddy River is warranted, will be prepared for this population and made available for public review and comment. The prudency and determinability of critical habitat for the Muddy River population will be addressed at that time.

The Virgin River chub was first collected in the 1870s from the Virgin River near Washington, Utah. Historically, it was collected in the mainstem Virgin River from Pah Tempe Springs, Utah, downstream to the confluence with the Colorado River in Nevada (Cope and Yarrow 1875; Cross 1975), though it may have occurred upstream of that point. Presently, the Virgin River chub occurs within the mainstem Virgin River from Pah Tempe Springs, Utah, downstream to at least the Mesquite Diversion, located near the Arizona-Nevada border.

Adult and juvenile Virgin River chub select deep runs or pools with slow to moderate velocities containing boulders or other instream cover over a sand substrate. Generally, larger fish occupy deeper habitats; however, there is no apparent correlation with velocity. Chub are generally found in velocities ranging up to 0.76 m/s (2.5 ft/s).

Importance of the Virgin River Floodplain

Preservation of the river channel alone is not sufficient to ensure the survival and recovery of the woundfin and Virgin River chub. The Virgin River floodplain is integral to preserving the integrity of the primary constituent elements (defined below) and maintaining the natural dynamics of the Virgin River. Components of a healthy river system needed for these fish include the mainstem channel, where water is maintained most or all of the year, and upland habitats that are inundated during spring flows. Studies of the major floodplain rivers of the world have documented the value of flooded bottomlands and uplands for fish production (Welcomme 1979). For example, loss of floodplain habitats in the Missouri River Basin has reduced fish biomass production as much as 98 percent (Karr and Schlosser 1978). These seasonally flooded habitats contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides nutrients and terrestrial food sources to aquatic organisms (Hesse and Sheets 1993). The Virgin River contains little aquatic vegetation and contains a minimum amount of autochthonous (produced within the river) organic matter. Thus, the fauna of the Virgin River is heavily dependent on allochthonous energy inputs from the floodplain that provides or supports much of the food base. This rich, terrestrial food source may enhance fish growth, fecundity, and/or survival.

Use of these inundated floodplain areas increases the energy available for spawning and is necessary for reproductive success in some species (Finger and Stewart 1987). In many cyprinid fishes, including these listed fishes, spawning is associated with seasonal rains and flooding of rivers. Flood-related changes in the river

environment induce spawning for many species, while the loss of these seasonal changes due to water withdrawals and channel constrictions may be a contributing factor limiting recruitment for these fish (Hontele and Stacey 1990).

Protection of floodplain areas also provides the spatial and temporal scope for natural physical processes, including flooding, to occur (National Research Council 1992). These processes over time shape and reshape the river, constantly redefining the physical habitat and complexity of the river. Large flow events allow the river to meander, thereby creating and recreating the mosaic of habitats necessary for the survival and recovery of the listed fishes. As long as this physical reshaping occurs, the habitat complexity and biological productivity associated with river-floodplain systems necessary for the survival and recovery of the listed fishes will be maintained.

Inundation of floodplain habitats during spring flows also provides areas with warmer water temperatures, lower water velocity habitat used for resting, and cover from predation. Recent studies in the Colorado River system show that the life histories and welfare of native riverine fishes are linked to the maintenance of a natural or historical flow regime (*i.e.,* hydrological pattern of high spring and low autumn and winter flows that vary in magnitude and duration depending on annual precipitation patterns and runoff from snowmelt) (Tyus and Karp 1989, 1990). Minckley and Meffe (1987) suggest that loss of flooding will result in extirpation of many of the native fish species in the Colorado River system.

Previous Federal Action

We listed the woundfin as endangered on October 13, 1970 (35 FR 16047), and proposed critical habitat on November 2, 1977 (42 FR 57329). However, on March 6, 1979, we withdrew the proposal for critical habitat (44 FR 12382) due to the 1978 amendments to the Act, which required proposals to be withdrawn if not finalized within 2 years. A Woundfin Recovery Plan was originally approved in July 1979 and subsequently revised on March 1, 1984.

On August 23, 1978, we proposed listing the Virgin River chub as endangered and designating critical habitat (43 FR 37668). We also withdrew this proposal (45 FR 64853; September 30, 1980), due to the 1978 amendments to the Act. On June 24, 1986, we again proposed the listing as endangered and the designation of critical habitat for the Virgin River chub (51 FR 22949). The final rule to list the Virgin River chub as endangered was published on August 24, 1989 (54 FR 35305). We postponed the designation of critical habitat to allow time to undertake an analysis of the economic and other impacts of the designation as required by section 4(b)(2) of the Act. When the Virgin River chub was listed, the Muddy River form was specifically excluded because it was believed to be a separate, unnamed subspecies of roundtail chub (Moapa roundtail chub= *Gila robusta* ssp.).

On March 18, 1994, the U.S. District Court, Colorado (Court) ordered us to designate critical habitat for the Virgin River chub, woundfin, and Virgin spinedace (*Lepidomeda mollispinis mollispinis*) (if it became listed under the Act before December 31, 1994). The Court ordered that critical habitat be proposed no later than April 1, 1995, and be finalized by December 1, 1995. We proposed the Virgin spinedace for listing as a threatened species on May 18, 1994 (59 FR 25875), but did not include critical habitat in that proposed rule because we believed that all three fish species would receive greater conservation benefit if critical habitat for all three was designated simultaneously. We published a proposed rule designating critical habitat for the three fishes on April 5, 1995 (60 FR 17296). On April 11, 1995, we entered into the Virgin Spinedace Conservation Agreement and Strategy with other Federal, State, and private local entities to eliminate or reduce impacts threatening the continued existence of the Virgin spinedace. A Virgin River Fishes Recovery Plan, including the woundfin, Virgin River chub, and Virgin spinedace, was finalized on April 19, 1995. Because of the conservation efforts being implemented on behalf of the Virgin spinedace, we withdrew the proposed listing and critical habitat designation of the Virgin spinedace on February 6, 1996 (61 FR 4401). Therefore, the Virgin spinedace is no longer included in this critical habitat designation.

Prior to publication of a final rule designating critical habitat for the woundfin and Virgin River chub, Congress enacted a moratorium on final listing actions and we postponed further actions to finalize critical habitat. Disruptions in the listing budget beginning in Fiscal Year 1995 and the moratorium on certain listing actions, including critical habitat designations, during parts of Fiscal Years 1995 and 1996 remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. By that time, we had accrued a serious backlog of listing actions. To deal with this backlog, we developed and published Interim (61 FR 9651) and Final (61 FR 24722) Listing Priority Guidelines for Fiscal Year 1996. The guidelines described a multi-tiered approach to working through the listing backlog and identified critical habitat designations as our lowest listing priority. On December 5, 1996, we published our Final Listing Priority Guidance for Fiscal Year 1997 (61 FR 64475), which maintained this prioritization.

On May 8, 1998, we published our Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). The designation of critical habitat remained our lowest priority. However, in December 1998, the 10th Circuit Court ruled that we could no longer use this justification for not designating critical habitat and ordered us to designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*). Shortly after that decision, the plaintiffs in the Virgin River fishes case filed a motion requesting that we be ordered to finalize critical habitat designation for the woundfin and Virgin River chub. On August 27, 1999, the U.S. District Court of Colorado ordered us to finalize critical habitat designation for the woundfin and Virgin River chub by January 20, 2000.

Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. As explained above, critical habitat was delayed for a variety of reasons. With this final rule, however, critical habitat is now designated for the woundfin and Virgin River chub in the Virgin River.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.'' The term ''conservation,'' as defined in section

3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (*i.e.,* the species is recovered and removed from the list of endangered and threatened species).

We are required to base critical habitat decisions upon the best scientific and commercial information available (50 CFR 424.12) after taking into account economic and other impacts of such designation. In designating critical habitat for the woundfin and Virgin River chub, we have reviewed the overall approaches to the conservation of the woundfin and Virgin River chub undertaken or proposed by local, State, and Federal agencies operating within the Virgin River basin and the identified steps necessary for the species recovery outlined in the Virgin River Fishes Recovery Plan. We also have reviewed available information that pertains to the geographic range of the species in the Virgin River and the habitat requirements of each species. That information includes that received during the public comment periods associated with this rulemaking (described below).

Effect of Critical Habitat Designation

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

The designation of critical habitat is one of several measures available to assist in the conservation and recovery of a species. Critical habitat may help focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether the areas are currently occupied by the listed species. Such designation may alert Federal agencies, States, the public, and other organizations to the areas' importance. Critical habitat also identifies areas that may require special management considerations or protection.

The designation of critical habitat directly affects only Federal agencies, by prohibiting actions they fund, authorize, or carry out from destroying or adversely modifying critical habitat. Individuals, firms, and other non-Federal entities are not affected by the designation of critical habitat so long as their actions do not require support by permit, license, funding, or other means from a Federal agency.

An understanding of the interplay of the jeopardy and adverse modification standards is necessary to evaluate the likely outcomes of both consultation under section 7 and the environmental, economic and other impacts of any critical habitat designation. Implementing regulations (50 CFR part 402) define ''jeopardize the continued existence of'' (a species) and ''destruction or adverse modification of'' (critical habitat) in virtually identical terms. ''Jeopardize the continued existence of'' means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' ''Destruction or adverse modification'' means a direct or indirect alteration that ''appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.''

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Thus, for most species, actions likely to result in destruction or adverse modification of critical habitat are nearly always found to jeopardize the species concerned. Only in a few instances might an action be found to adversely modify critical habitat without also being found to jeopardize the continued existence of the species. This situation might occur in unoccupied habitat or occupied habitat that may become unoccupied in the future. In most cases, the existence of a critical habitat designation does not materially affect the outcome of consultation. This reality is often in contrast to the public perception (and the assumption used in the previous economic analysis as described in this final rule) that the adverse modification standard sets a lower threshold than the jeopardy standard in all instances. The similar nature of the jeopardy and adverse modification standards and the application of the standards is true for the listed Virgin River fishes as well. The area of the river system being designated as critical habitat in this final rule is occupied by the listed fishes.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or those activities that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined below) to an extent that the value of designated critical habitat for both the survival and recovery of a listed species is reduced appreciably.

Federal activities in the Virgin River basin that may adversely modify critical habitat include actions that reduce the volume and timing of water flows, destroy or eliminate access to spawning and nursery habitat, prevent recruitment, appreciably impact food sources, contaminate the river, or significantly increase predation and competition by nonnative fishes (Table 1). Examples of such activities may include construction and operation of hydroelectric facilities, additional irrigation diversions, flood control structures, bank stabilization structures, oil and gas drilling, golf courses, and resort facilities, as well as mining, grazing, additional pumping to meet municipal water demands, and stocking or introduction of nonnative fishes.

TABLE 1.—IMPACTS OF WOUNDFIN AND VIRGIN RIVER CHUB LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities impacted by species listing only [1]	Additional activities impacted by critical habitat designation [2]
Federal activities potentially affected [3].	Activities such as construction and operation of hydroelectric facilities, flood control, additional irrigation diversions, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, that the Federal Government carries out that may jeopardize the continued existence of a listed species (only activities impacting the occupied portions of the river system).	None.
Private activities potentially affected [4].	Activities such as additional irrigation diversions, flood control, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, municipal water supplies, golf courses, resort facilities, water wheeling, water leasing, and dewatering of springs for municipal and industrial purposes that require a Federal action (permit, authorization, or funding) that may jeopardize the continued existence of the species (only activities impacting the occupied portions of the river system).	None.

[1] This column represents the impacts of the final rules listing the woundfin (October 13, 1970; 35 FR 16047) and Virgin River chub (August 24, 1989; 54 FR 35305) under the Endangered Species Act and covers land in the occupied portion of the river system only. These rules prohibited actions funded, authorized, or carried out by Federal agencies that jeopardized the continued existence of the species. ''Jeopardizing the continued existence of the species,'' as defined by the Act, would result from an action that would appreciably reduce the likelihood of the species' survival and recovery.

[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

These types of activities have already been examined during formal and informal consultations with us since the listing of the species as endangered. No additional restrictions to these activities as a result of critical habitat designation are anticipated. For example, existing Federal activities in the area include the Pah Tempe Pipeline, Halfway Wash Project, Lake Powell Pipeline, water wheeling, water leasing, Washington Fields Pumpback, and dewatering of springs for municipal and industrial purposes.

Areas outside of critical habitat, containing one or more of the primary constituent elements, may still be important for the conservation of a species. Some areas do not contain all of the constituent elements and may have those missing elements restored in the future. Such areas may be important for the long-term recovery of the species even if they are not designated critical habitat because they may serve to maintain ecosystem integrity, thereby indirectly contributing to recovery.

In summary, designation of critical habitat focuses on the primary constituent elements within the defined areas and their contribution to the species' recovery, and includes consideration of the species' biological needs and factors that will contribute to their recovery (*i.e.,* distribution, numbers, reproduction, and viability). In evaluating Federal actions, we will consider the actions' impacts on the primary constituent elements of water, physical habitat, and biological environment (discussed below). The ability of an area to provide these constituent elements into the future and to contribute to the recovery of the species will also be considered. The potential level of allowable impacts or habitat reduction in critical habitat will be determined on a case-by-case basis during section 7 consultation.

Primary Constituent Elements

In identifying areas as critical habitat, 50 CFR 424.12 provides that we consider those physical and biological features that are essential to a species' conservation and that may require special management considerations or protection. Such physical and biological features, as outlined in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

In determining critical habitat for the woundfin and Virgin River chub, we focused on the primary physical and biological elements essential to the conservation of each species. Prior to designating an area as critical habitat, we assessed the area for all applicable constituent elements.

The primary constituent elements of critical habitat determined necessary for the survival and recovery of these Virgin River fishes are water, physical habitat, and biological environment. The desired conditions for each of these elements are further discussed below.

Water—A sufficient quantity and quality of water (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species. This includes the following:

(1) Water quality characterized by natural seasonally variable temperature, turbidity, and conductivity;

(2) Hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular life stages at certain times of the year; and

(3) Flood events inundating the floodplain necessary to provide the organic matter that provides or supports the nutrient and food sources for the listed fishes.

Physical Habitat—Areas of the Virgin River that are inhabited or potentially habitable by a particular life stage for each species, for use in spawning, nursing, feeding, and rearing, or corridors between such areas:

Woundfin

(1) River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats;

(2) Areas inhabited by adult and juvenile woundfin include runs and

pools adjacent to riffles that have sand and sand/gravel substrates;

(3) Areas inhabited by juvenile woundfin are generally deeper and slower. When turbidity is low, adults also tend to occupy deeper and slower habitats;

(4) Areas inhabited by woundfin larvae include shoreline margins and backwater habitats associated with growths of filamentous algae.

Virgin River Chub

(1) River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats; and

(2) Areas with slow to moderate velocities, within deep runs or pools, with predominately sand substrates, particularly habitats which contain boulders or other instream cover.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to nonnative fish species in many areas. Fourteen introduced species, including red shiner (*Cyprinella lutrensis*), black bullhead (*Ameiurus melas*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*), compete with or prey upon the listed fishes. Of these, the red shiner is the most numerous and has been the most problematic for the listed fishes. Red shiners compete for food and available habitats and are known to prey on the eggs and early life stages of the listed fishes. Components of this constituent element include the following:

(1) Seasonally flooded areas that contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides and supports much of the food base of the listed fishes; and

(2) Few or no predatory or competitive nonnative species in occupied Virgin River fishes' habitats or potential reestablishment sites.

Critical Habitat Designation

Woundfin—The area designated as critical habitat for the woundfin is the mainstem Virgin River and its 100-year floodplain (as defined below), extending from the confluence of La Verkin Creek, Utah, to Halfway Wash, Nevada, and includes 59.6 km (37.3 mi) of the mainstem Virgin River in Utah, 50.6 km (31.6 mi) in Arizona, and 29.9 km (18.6 mi) in Nevada (Table 2). This designation totals 140.1 km (87.5 mi) of the mainstem Virgin River, which represents approximately 12.5 percent of the woundfin's historical habitat. Due to the lack of historical data on the distribution of the woundfin in Arizona, this percentage is only an estimate. The area of the Virgin River designated as critical habitat consists of the remaining occupied habitat for the woundfin, and this portion of the Virgin River flows through both public and private lands (Table 3).

TABLE 2.—CRITICAL HABITAT IN KILOMETERS (MILES) FOR VIRGIN RIVER LISTED FISHES

State	Woundfin	Virgin River chub	State totals
Arizona	50.6 (31.6)	50.6 (31.6)	50.6 (31.6)
Nevada	29.9 (18.6)	29.9 (18.6)	29.9 (18.6)
Utah	59.6 (37.3)	59.6 (37.3)	59.6 (37.3)
Total	140.1 (87.5)	140.1 (87.5)	140.1 (87.5)

TABLE 3.—CRITICAL HABITAT SHORELINE OWNERSHIP IN KILOMETERS (MILES) OF CRITICAL HABITAT OCCUPIED BY THE WOUNDFIN AND VIRGIN RIVER CHUB [1]

Ownership	Woundfin and Virgin River chub	Percent
Federal	80.9 (50.5)	57.7
State	3.3 (2.1)	2.4
Private	55.9 (34.9)	39.9
Total	140.1 (87.5)	100.0

[1] Landownership was typically the same on both riverbanks. However, in several reaches (1.5 km or less), the river forms a boundary between Federal and private lands. Based upon the location of the channel, these reaches were identified as either Federal or private, not both. Therefore, distances given may be doubled to represent ownership along both riverbanks.

Virgin River Chub—The area designated as critical habitat for the Virgin River chub is the mainstem Virgin River and its 100-year floodplain (as defined below), extending from the confluence of La Verkin Creek to Halfway Wash and is identical to the designation for the woundfin (Table 2). The designation for this species represents approximately 65.8 percent of the Virgin River chub's historical habitat within the Virgin River Basin. The area of the Virgin River designated as critical habitat consists of the remaining occupied habitat for the Virgin River chub, which flows through both public and private lands (Table 3).

The designation of critical habitat for both listed fishes includes the mainstem Virgin River currently occupied by the species. The 100-year floodplain of the Virgin River is included in the designation of critical habitat for both species, but we are designating only those portions of the 100-year floodplain that contain at least one of the primary constituent elements for critical habitat. We chose the 100-year floodplain for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area. The 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), while not included on standard topographic maps, is an area of land that would be inundated by a flood having a one

percent chance of occurring in any given year. It is the Federal standard for protection of life and property and is delineated and readily available on FEMA floodplain maps. This boundary, rather than some other delineation, was primarily chosen for two reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.,* allowing the river to meander within its main channel in response to large flow events, thereby recreating the mosaic of habitats necessary for the survival and recovery of Virgin River endangered fishes); and (2) conservation of the 100-year floodplain also helps protect the riparian areas and provide essential nutrient recharge to the Virgin River, which contributes to successful spawning and recruitment of endangered fishes.

Some developed lands within the 100-year floodplain boundary are not considered critical habitat because they do not contain the primary constituent elements. These include, but are not limited to, existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion canals outside of natural stream channels, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments. These developed areas do not contain the primary constituent elements and do not furnish habitat or biological features for the listed fishes, and generally will not contribute to the species' recovery. However, some activities in these areas (if federally funded, authorized, or carried out) may affect the constituent elements of the designated critical habitat and, therefore, may be affected by critical habitat designation, as discussed later in this final rule.

Summary of Changes From the Proposed Rule

During the public comment period for the proposed rule (60 FR 17296), we received information provided by the Nevada Division of Wildlife and Bio/West, Inc. indicating that very few woundfin or Virgin River chub have ever been collected below Halfway Wash, Nevada. The backwater effect of the high water line of Lake Mead has resulted in a large amount of sand deposition below Halfway Wash. This deposition has changed the morphology of the river from a single channel to a highly braided river reach consisting of multiple rivulets, thereby reducing the gradient of the river and resulting in an extremely shallow multiple channeled habitat, not suitable for either woundfin or Virgin River chub. Based on this information, we changed the critical habitat boundary in Nevada from the highwater level of Lake Mead to Halfway Wash. This change reduced the critical habitat in Nevada by 11.6 km (7.3 mi) from what was described in the proposed rule. Additionally, critical habitat as proposed for the Virgin spinedace (60 FR 17296) was formally withdrawn on February 6, 1996 (61 FR 4401). This action further reduced the designation by 179 km (112.0 mi).

One assumption that we used in the economic analysis was that the threshold for an action to result in an adverse modification determination was less than the threshold for an action to jeopardize the continued existence of a species. The economic impacts summarized in the proposed rule were based on this assumption. Since the development of the economic analysis and subsequent proposed rule designating critical habitat in the Virgin River basin, we have determined that, in most cases, actions that are likely to result in the destruction or adverse modification of critical habitat are nearly always found to jeopardize the continued existence of the species concerned. This determination is based, in part, on numerous consultations concerning listed fish and critical habitat designated in the 100-year floodplain in the upper Colorado River basin. These consultations have demonstrated little or no difference in the results of application of the jeopardy and adverse modification standard. We further discuss the effect of this determination in the ''Consideration of Economic and Other Impacts'' section of this final rule.

As originally proposed, the critical habitat designation included five separate river reaches (Maddux *et al.* 1995). We structured the proposal this way to coincide with the economic analysis and to facilitate exclusion of areas if the economic impacts of designation of critical habitat outweighed the benefits, provided that exclusion would not result in the extinction of either species. For the final designation, we have simplified the boundaries by combining all five reaches into a single section of river.

Consideration of Economic and Other Impacts

Section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts in determining whether to exclude any proposed area(s) from the final designation of critical habitat. We may exclude an area from critical habitat designation if the benefits of its exclusion outweigh the benefits of its inclusion in critical habitat, unless failure to designate the area would result in extinction of the species concerned. In 1995, we conducted an analysis on the potential economic impacts of the proposed critical habitat designation (Brookshire *et al.* 1995).

When we directed the economic analysis in 1995, we assessed the biological requirements for the recovery of the listed fishes and the regional economic activities as the basis of the analysis. The biological requirements needed to ensure recovery of the listed fishes include adjustments in water diversions in the Virgin River basin and/or mitigation of nonflow-related activities within the 100-year floodplain. We also took into consideration the effects of potential recovery efforts on future water depletions in the basin. The study region for the economic analysis included Washington and Iron Counties in Utah, Clark County in Nevada, and the portion of Mohave County in Arizona located north of the Colorado River.

We believed that Washington County, Utah, and Clark County, Nevada, would be directly affected by any actions taken by the Service on behalf of the listed fishes. These counties are presently among the fastest growing in the United States. From 1980 to 1990, Washington County's population grew by 52 percent, while Clark County's grew by 62.5 percent. Iron County, Utah, (north of Washington County) is a rapidly growing area that is economically closely linked to Washington County. Although the Virgin River does not flow through Iron County, any economic impacts on Washington County would be felt in Iron County as well. The Virgin River also flows through a portion of Mohave County in Arizona. This area has a very small population and a modest economic base.

In the 1995 economic analysis, we analyzed the economic impacts of insuring that the biological requirements of the listed fishes were met in the Virgin River Basin. Our analysis included impacts that were attributable to the listing itself, through the requirement that Federal agencies consult with us to ensure that their actions do not jeopardize the continued existence of the species. Habitat requirements of the listed fishes have been addressed by the jeopardy standard in each consultation we have done since the fishes were listed. Although we separately analyzed the incremental effects of the critical habitat designation above and beyond the effects of listing, that separation was based on the incorrect assumption that

the threshold for an action to result in an adverse modification determination is less than the threshold for determining that the action will likely jeopardize the continued existence of a species. We now recognize that our analysis should have been restricted to the specific impacts of designating critical habitat, if any, that would occur above and beyond the economic impacts of the listing, an interpretation upheld by recent case law (*New Mexico Cattle Growers Association et al.* v. *United States Fish and Wildlife Service, et al.,* CIV No. 98–0275 BB/DJS–ACE).

In the economic analysis, we also made an assumption that as a species moves from near extinction to recovery, the likelihood that any given project will cause adverse modification remains relatively constant, while the likelihood of jeopardy decreases. While this assumption will hold true in some circumstances, it has turned out to be a more complicated situation than initially presumed. Specifically, factors that alter the likelihood of jeopardy will only alter the likelihood of adverse modification to the extent that they affect critical habitat. However, because the adverse modification determination has its foundation in the likelihood of survival and recovery, as does the jeopardy determination, factors that increase the likelihood of adverse modification should logically increase the likelihood of jeopardy as well. In other words, adverse modification determinations will generally coincide with jeopardy determinations.

After years of conducting consultations under section 7 of the Act on actions affecting both a listed species and its critical habitat, we have learned that the two thresholds are nearly identical. In fact, biological opinions which conclude that a Federal agency action is likely to adversely modify critical habitat but not to jeopardize the species for which it is designated are extremely rare historically. Although the Service has participated in thousands of formal consultations (an estimated 900 in Fiscal Year 1999 alone), no such biological opinions have been issued in recent years. The similar application of the two standards is true in the specific case of the listed Virgin River fishes as well. In this final rule we review the results of the economic analysis in light of the correct assumption (that the thresholds for adverse modification and jeopardy are usually identical.)

Results of the Economic Analysis

Because the entire economic analysis was based on our incorrect assumption that the threshold for an action to result in an adverse modification determination is less than the threshold for an action to jeopardize the continued existence of a species, we conclude that even the small potential impacts attributable to critical habitat designation as discussed in the economic analysis, and summarized in the proposed rule, were overstated and are primarily attributable to the listing of the woundfin and Virgin River chub.

We have concluded that no incremental economic impacts are associated with the critical habitat designation above and beyond the effects of listing the species. Therefore, we do not believe that any benefit results from excluding any area from designation, nor that any benefit of exclusion outweighs the benefit of critical habitat designation. Consequently, we have simplified the critical habitat boundaries originally described in the proposed rule by combining the areas described as five reaches into a single section of river.

Summary of Comments

On April 5, 1995, we published the proposed rule and notice of public hearing in the **Federal Register** (60 FR 17296). We solicited public comment on the proposed critical habitat designation and its associated draft economic analysis. The public comment period was open from April 5, 1995, to June 5, 1995, and was further extended by request to June 20, 1995 (60 FR 31444). During the comment period, we conducted a public hearing in St. George, Utah, on May 8, 1995. Additional notification of the public hearing and comment period was provided by letter to appropriate State agencies, county governments, Federal agencies, and other interested parties. Notice of the proposed rule, comment period, and the public hearing was also published in the *Kingman Daily Miner, Desert Valley Times, Daily Spectrum, Deseret News, Salt Lake Tribune, Las Vegas Review Journal,* and *Las Vegas Sun.* During the comment period, we received 14 written comment letters and 6 people testified at the public hearing. Copies of all comments were made available to the public at the Washington County Library, Utah.

Prior to the court order to finalize critical habitat designation, on August 9, 1999, we published in the **Federal Register** (64 FR 43206) a notice of availability of a draft environmental assessment on the proposed action of designating critical habitat. The public comment period was open from August 9, 1999, to September 8, 1999. Additional notification of the availability of the draft environmental assessment and comment period was provided by letter to appropriate State agencies, county governments, Federal agencies, and other interested parties. During the comment period, we received 12 written comment letters. After a review of all comments received in response to the draft environmental assessment, on November 24, 1999, we published a notice of availability of the final environmental assessment and finding of no significant impact for designation of critical habitat for the listed fishes (64 FR 66192) .

Some of the information provided during the comment periods is reflected in this final rule. A summary of the other issues raised in the written and oral comments regarding the proposed rule, economic analysis, and draft environmental assessment is provided below.

Issue 1: The critical habitat designation is based on the assumption that fish populations have declined in occupied reaches. The critical habitat designation is not warranted because numbers of individuals of these species may not have declined, although number of miles occupied has decreased.

Service Response: We disagree. At the time of listing, we determined that both the woundfin and Virgin River chub warranted protection under the Act due to a number of factors. These factors included both a decline in the occupied range of the species as well as a decline in the abundance of the species. In addition, current data, both published and unpublished, indicate that the decline in the woundfin population is continuing. Deacon (1988) showed that a substantial decline in woundfin occurred in the Virgin River above Quail Creek Reservoir and below Pah Tempe Springs between 1976 and 1993. He attributed this decline, in part, to a decrease in water quality because flows above Pah Tempe Springs were diverted at the Quail Creek Diversion. Prior to 1985, these flows had previously diluted the high saline input from Pah Tempe Springs. Holden and Zucker (1996) analyzed data from 1976–1993 that showed a very clear long-term decline of woundfin at long-term sampling stations in Utah, Arizona, and Nevada. When they plotted the data as number of woundfin caught per seining effort per year, they found a statistically significant negative trend over time ($p < 0.05$) at all stations except one during the fall season, indicating an overall decline in the woundfin population. Monitoring data from the Utah Division of Wildlife Resources (unpublished data, Recovery Team Meeting Minutes, April 29, 1999) show a substantial

decline from 1994 (total number=456 (spring), 604 (fall)) to 1999 (total number=77 (spring), 162 (fall)).

Anecdotal, historical information suggests that Virgin River chub were very abundant before the 1900s and that the abundance and range of Virgin River chub has declined substantially throughout its range in Utah, Arizona, and Nevada since white settlement and water development. Reasons for this decline are thought to be mainly habitat destruction. Habitat is degraded through dewatering of the river system such that some areas are inundated by reservoirs and other areas are completely dewatered. Also, competition from nonnative species which may prey on young life-stages of Virgin River chub may contribute to population declines (Holden 1977).

Virgin River chub have the lowest densities of any native fish in the Virgin River (Radant and Coffeen, 1986; Hardy and Addley 1994). However, observed numbers may or may not reflect actual abundance. Because Virgin River chub occupy deep holes and habitats that are often logistically difficult to sample, catch rates can be erratic and sampling can be difficult to standardize. Based on the long-term data available, Virgin River chub show a general decline in Utah, Arizona, and Nevada, particularly since the mid-1980s. Yet in some areas (below Hurricane Bridge and below Washington Diversion) numbers are stable or within the range of variability noted in the late 1970s and early 1980s (Hardy and Addley 1994). Hardy and Addley are careful to note that declines may be due to droughts and other natural climatic changes. Natural droughts are no doubt exacerbated by water development and the human need for water during these years. More recent data are being analyzed to determine the current status of Virgin River chub and to determine if declining trends continued through the late 1990s.

Issue 2: The lower portion of La Verkin Creek should be included as critical habitat for the woundfin.

Service Response: Although woundfin are occasionally collected in this reach, we are aware of no data that indicate that this area is being used for reproduction or as a nursery or that it is essential for the conservation of the species. Therefore, it is not included in this final critical habitat designation.

Issue 3: Why did we not include the Muddy River in Nevada as critical habitat for the Virgin River chub?

Service Response: Please see our discussion of the Muddy River population in the Background section of this final rule. Because the Muddy River population was not listed, critical habitat designation is not appropriate. However, we intend to conduct a separate listing determination for the Muddy River population, which will include an analysis of the status of the species and a determination about the prudency and determinability of a critical habitat designation.

Issue 4: The area from Quail Creek Diversion to Pah Tempe Springs should be included in the critical habitat designation for the woundfin.

Service Response: While it is possible that this area was historical habitat for the Virgin River chub, woundfin have never been found in this reach. It is a high-gradient reach of the river that has gone dry annually for the past 80 years. When critical habitat was proposed, this reach of the river was left out because it was dry dammed. Since critical habitat was proposed, 3 cfs of flows have been restored to this reach of the river. However, since that time only one Virgin River chub has been collected in this reach of the Virgin River. We do not believe that this reach provides those physical or biological features essential to the conservation of either species.

Issue 5: Additional streams in Arizona should be designated as critical habitat.

Service Response: On July 24, 1985, we proposed the reintroduction of the woundfin into the Gila River drainage in Arizona and determined this population to be ''nonessential experimental'' in accordance with section 10(j) of the Act (50 FR 30188). The Act prohibits inclusion of nonessential experimental population areas in critical habitat designations.

Issue 6: The Virgin River in Utah was segmented into numerous reaches for designation; no segmenting was done in Nevada or Arizona.

Service Response: Please see our discussion under the ''Summary of Changes to the Proposed Rule'' section of this final rule.

Issue 7: How is the 100-year floodplain defined, and which parts of the floodplain are critical habitat?

Service Response: Please see the discussion under the ''Critical Habitat Designation'' section of this proposed rule.

Issue 8: A 10-year floodplain designation should be sufficient because the riparian community is maintained at this flow level.

Service Response: Critical habitat, among other things, is intended to identify areas that may require special management protection or consideration. Our intention in designating a portion of the floodplain as critical habitat is to encompass not only the area which provides a major source of food and nutrients to the river, but also the area within which the river meanders. Only areas that contain at least one of the primary constituent elements are considered critical habitat. Critical habitat that would encompass a 10-year floodplain would not contain these attributes. Moreover the selection of the 100-year floodplain is consistent with and supports the goals of Virgin River Management Plan (1999) and the Proposed Virgin River Resource Management and Recovery Program, both of which contain provisions for the protection and enhancement of the 100-year floodplain.

Issue 9: Critical habitat designation is not prudent because of preparation of the Virgin River Management Plan.

Service Response: As discussed in the implementing regulations at 50 CFR 424.12, critical habitat is considered not prudent when one or more of the following situation exists:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species.

In the absence of any information that indicates that critical habitat will increase the degree of threat to a species threatened by taking or other human activity, any small benefit of designation requires that the designation be found prudent. Although we supported development of the Virgin River Management Plan (1999), this plan does not increase the degree of threat to the species nor negate any benefits that may be provided to the species from critical habitat designation. Therefore, such designation must be found prudent. The extent to which this plan will protect the Virgin River is still unknown. Additionally, this plan only covers the Utah portion of the habitat. We anticipate that the Virgin River Management Plan and critical habitat designation will complement each other.

Issue 10: The Service should do NEPA on critical habitat designation.

Service Response: Please see our discussion under the ''Required Determinations'' section of this final rule.

Issue 11: The designation does not give full consideration to existing and future water rights.

Service Response: Critical habitat designation for the Virgin River listed fishes does not modify nor nullify any existing State water law, compact agreement, or treaty. Impacts to water development opportunities within the States are mainly attributable to the effects of listing these species. It is our

intent to fully consider State water law, interstate compact agreements, and treaties in protecting and recovering the listed fishes. As an example, we worked with the State of Utah and the WCWCD to develop a Virgin River Management Plan. This plan is intended to address both the needs for future water development and recovery of the listed fishes consistent with State water laws and other agreements.

Issues and Responses Pertaining to the Economic Analysis

Because the entire economic analysis was based on our incorrect assumption that the threshold for an action to result in an adverse modification determination is less than the threshold for an action to jeopardize the continued existence of a species, in this final rule we have concluded that even the small, potential impacts attributable to critical habitat designation as discussed in the economic analysis, and summarized in the proposed rule, were overstated and are primarily attributable to the listing of the woundfin and Virgin River chub. Although many of the points raised by various commentors on the economic analysis are no longer relevant given our conclusions about the economic impacts of critical habitat, we offer the following responses to the issues raised about the analysis.

Issue 12: The economic analysis incorrectly assumes that converting agriculture to secondary/culinary water will reduce current flows to the river.

Service Response: The economic analysis assumed that converting agricultural water to Municipal and Industrial (M&I) water might result in decreased river flows. The Utah State Water Plan for the Virgin River Basin reports water depletion figures for agricultural use to be 45 percent and for M&I use to be 63 percent. Therefore, converting agricultural use to M&I would result in a net decrease in water returns of 19 percent. Although return flows may be greater than those used in the economic analysis, the points at which these flows are returned to the river remain unknown.

Issue 13: The economic analysis did not assess impacts to Mohave County, Arizona.

Service Response: The majority of Mohave County's economic activity falls outside of the Virgin River study area, however, a small part of Mohave County, was included, mainly around the town of Litchfield, Arizona. There is little economic activity in this part of Mohave County, and it includes 0.39 percent of the total population of the study area. Consequently, the economic activity occurring in Mohave County was shared out of the total activity for the Virgin River area based on population. This activity was then incorporated into the Clark County analysis.

Issue 14: The Washington County Water Conservancy District's (WCWCD) water plans should have been incorporated into the economic analysis, and sensitivity analyses regarding the hydrologic assumptions should have been conducted.

Service Response: The WCWCD's water plans, as represented by the report ''Population Projections and Future Water Demands'', prepared by Boyle Engineering (1994) for WCWCD, were, in fact, used in creating the baseline scenario. The hydrologic assumptions were structured such that the resulting economic analysis always yielded a worst-case set of economic impacts. Thus, sensitivity analysis would only lower the impacts presented in the report.

Issue 15: The Service's choice of the modeling methodology and the choice of discount rates used in the economic analysis were presented without explanation of why other models or discount rates were rejected.

Service Response: The Act requires the calculation of the economic impacts of critical habitat designation. The use of the contingent valuation method for inclusion in cost-benefit analysis is not germane. Our use of input-output analysis yielded both the direct and indirect impacts associated with recovery needs of the listed fishes. Regarding the discount rate, the discounting procedures and assumptions used represent the ''industry standard.'' The extant economic literature clearly calls for a positive discount rate for economic analyses addressing water allocation issues.

Issue 16: Private landowner effects, water right reallocations, loss of open space, and community character should have been addressed by the economic analysis.

Service Response: There are no additive impacts to private property owners from critical habitat designation that were not present when the species were listed. If Federal funding or Federal permits are required for a private action, the Federal action agency must then consult with the Service. All transactions associated with the reallocation of water are voluntary market transactions and are not impacts of this action. The extent to which the community chooses to allow the loss of open space and changes in community character is beyond the scope of the economic analysis. It should be noted, however, that the designation of critical habitat along another river-floodplain system, the 100-year floodplain of the Colorado River, has not precluded the setting aside of open space or development of parks and trails within the floodplain or adjacent to the river.

Issue 17: It was improper to attribute benefits of water conservation to critical habitat designation in the economic analysis.

Service Response: Water conservation will be realized, with or without the listed fishes or a critical habitat designation, by water management and conservation measures currently being implemented or planned in the future within the study area, in particular, Washington County. The economic analysis did not attribute the benefits of water conservation to listed fishes recovery and conservation. Rather, the water conservation scenario serves to demonstrate that the economic impacts of the listed fishes including designation of critical habitat can be mitigated with moderate conservation efforts.

Issue 18: The economic analysis did not document the gross overuse and waste of water in Washington County.

Service Response: The report ''Population Projections and Future Water Demands'', prepared by Boyle Engineering (1994) for WCWCD addressed these matters. Further analysis in these regards is beyond the scope of the economic analysis.

Issue 19: Not enough weight is given in the economic analysis to the consequences of the conversions of agricultural lands in Washington County due to critical habitat.

Service Response: The agricultural lands conversions that are projected to occur during the economic analysis study period are generated by the population growth that is projected for the region, not by the needs of the listed fishes or the designation of critical habitat. These agricultural lands are, in fact, incorporated in the baseline projection of the economy without taking the fish needs into consideration. The fish needs may accelerate the retirement of agricultural water rights in order to maintain water in the Virgin River for the listed fishes and still allow for water development to occur to meet the needs of a growing human population. This incremental retirement of water and conversion of land is attributable mainly to the listing of these fishes and was incorporated into the economic analysis.

Issue 20: The time period for the economic analysis is too short and omits the long term impacts of the designation of critical habitat.

Service Response: The study period for the economic analysis (1995–2040) was selected for the reasons described previously in this rule. By the end of this period, the population of Washington County is projected to be 380,600 people. Development projections undertaken by Boyle Engineering (1994) place the maximum population of Washington County at approximately 350,000 at population density levels consistent with the present lifestyles of the area. Thus, the population will have reached a steady state by the end of the study period used in the economic analysis and further impacts are not anticipated.

The comment further assumes that water maintained to meet the flow needs of the fish in critical habitat is lost to the national economy. While the Washington County area cannot develop this water, Las Vegas, Nevada, could use it after it reaches Halfway Wash. From a national perspective, the water may well have a higher value in Las Vegas than in Washington County, Utah, because of the larger, more diverse economy in Clark County, Nevada.

Issue 21: The retirement of agricultural lands is not correctly addressed in the economic analysis. If land retirements are market driven, then the low productivity lands will be converted first and the high productivity lands last.

Service Response: This point is correct. The economic analysis uses the average (county-level) productivity to value all agricultural lands. This approach overstates the economic impacts due to the listed fishes and critical habitat designation because the discounted present value of agricultural retirements is higher when the average land value is used. This is consistent with the approach calculating the worst-case economic impacts.

Issue 22: The economic analysis does not measure the national efficiency effects of critical habitat designation.

Service Response: In accordance with the Act and the regulations that implement it, the final designation of critical habitat is made on the basis of the best available scientific data, after taking into consideration the probable economic and other impacts of the designation upon proposed or ongoing activities. The national efficiency effects are computed and reported in the economic analysis prepared by Brookshire *et al.* 1995 (see Chapter 8) and summarized in the proposed rule. The economic analysis discusses the conditions under which the factor payments computed from the input-output analysis may be used to value the national efficiency changes.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. This final rule identifies the areas being designated as critical habitat for the woundfin and Virgin River chub. The designation will not have an annual economic effect of $100 million. Our summary of the economic impacts of designation is discussed earlier in this final rule. This rule will not create inconsistencies with other agencies' actions. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Proposed and final rules designating critical habitat for listed species are issued under the authority of the Act. Critical habitat regulations are issued under procedural rules contained in 50 CFR part 424. Based on previous formal and informal consultations with other Federal agencies under section 7 of the Endangered Species Act, the Service has determined that there are no economic impacts of critical habitat designation above and beyond the impacts of the original listing of the species. Cases identified in the economic analysis as a potential economic impact of critical habitat designation are actions that would also result in a finding of ''jeopardize the continued existence of the species'' during section 7 consultation. Thus, any economic impact associated with the Virgin River chub and woundfin is one incurred by the original listing of the species, not by this critical habitat designation.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As explained previously in this final rule, the designation will not have economic effects above and beyond those attributed to the listing of the species. This is because the prohibition against destroying or adversely modifying critical habitat is essentially duplicative of the prohibition against jeopardizing the continued existence of the species, and therefore, there are no additional economic effects that are not already incurred by the listing of the species.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. As explained in this rule, we do not believe that the designation will have economic effects above and beyond those attributed to the listing of the species. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, because the designation will not have significant economic effects above and beyond the listing of the species. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Based on our analysis of the economic impacts of this rule as discussed above, and in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not significantly affect small governments because it will not place additional burdens on small (State, local, or Tribal) governments. 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.)

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. Although the critical habitat designation includes 55.9 kilometers of privately owned shoreline of the mainstem Virgin River, this final rule will not ''take'' private property rights and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands, or to private lands if a Federal nexus exists (i.e., if a Federal agency authorizes or funds an action on private land). Private actions without a federal nexus on private land are not subject to any critical habitat prohibitions. Any private actions on private land that have a Federal nexus are already subject to consultation under section 7 of the Endangered Species Act. Because we have identified no economic effects of critical habitat designation above and beyond those that have accrued from the listing of these species, there are no takings implications.

Federalism

In accordance with Executive Order 13132, this final rule will not affect the structure or role of States, and will not have direct, substantial, or significant

effects on States. As previously stated, critical habitat is applicable only to Federal lands or to non-Federal lands to the extent that activities require Federal funding or permitting. Also, we have determined that additional economic impacts would not result from this critical habitat designation.

In keeping with Department of the Interior policy, we requested information from and coordinated development of the critical habitat proposal with the appropriate State resource agencies in Utah, Arizona, and Nevada. On August 9, 1999, we published in the **Federal Register** (64 FR 43206) a notice of availability of a draft environmental assessment on the proposed action of designating critical habitat. The public comment period was open from August 9, 1999, to September 8, 1999. Additional notification of the availability of the draft environmental assessment and comment period was provided by letter to appropriate State agencies, county governments, Federal agencies, and other interested parties. During the comment period, we received 12 written comment letters, which were considered in finalizing this rule.

It is our intent to fully consider State water law, interstate compact agreements, and treaties in protecting and recovering the listed fishes. As an example, we worked with the State of Utah and the WCWCD to develop a Virgin River Management Plan (1999). This plan is intended to address both the needs for future water development and recovery of the listed fishes consistent with State water laws and other agreements. The selection of the 100-year floodplain as the boundary for this critical habitat designation is consistent with and supports the goals of the Virgin River Management Plan and the Proposed Virgin River Resource Management and Recovery Program, both of which involve the State of Utah.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The final designation of critical habitat for the woundfin and Virgin River chub has been reviewed extensively. Every effort has been made to ensure that the rule contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. denied* 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We have completed that analysis through an Environmental Assessment and Finding of No Significant Impact.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and procedures outlined by the Department of the Interior (512 DM 2), we recognize our responsibility to work with federally recognized Tribes on a Government-to-Government basis. Moreover, the 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species.'' We are unaware of any Tribal lands containing habitat essential to the conservation of the listed fishes.

References Cited

A complete list of all references cited is available upon request from the Field Supervisor, Salt Lake City Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Henry R. Maddux and Janet Mizzi, previously of our Salt Lake City Field Office, Patty Stevens of our Denver Regional Office, and Keith Rose of our Salt Lake City Field Office (see **ADDRESSES** section).

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 set forth below:

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.

§ 17.11 [Amended]

2. Amend section 17.11(h) by revising the entry in the critical habitat column of the entry for ''Chub, Virgin River,'' and ''Woundfin'', under FISHES, to read as follows:

§ 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						
FISHES							
*	*	*	*	*	*	*	*
Chub, Virgin River ...	*Gila robusta seminuda.*	U.S.A. (AZ, NV, UT)	.....do	E	361	§ 17.95(e)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Woundfin	*Plagopterus argentissimus.*	U.S.A. (AZ, NV, UT), Mexico.	Entire, except Gila River drainage, AZ, NM.	E	2,193	§ 17.95(e)	NA
*	*	*	*	*	*	*	*

3. Amend Section 17.95(e) by adding critical habitat of the Virgin River chub (*Gila robusta seminuda*) and woundfin (*Plagopterus argentissimus*) in the same alphabetical order as these species occur in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

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Virgin River Chub (*Gila seminuda*)

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 Bureau of Land Management (BLM) maps (Surface Management Status 30 x 60 Minute Quadrangle). Legal descriptions for Overton (Nevada-Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30 x 60 Minute Quadrangle). The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing at least one of the constituent elements are considered critical habitat. Critical habitat designated for the Virgin River chub is as follows:

Utah, Washington County; Arizona, Mohave County; Nevada, Clark County. The Virgin River and its 100-year floodplain from its confluence with La Verkin Creek, Utah in T.41S., R.13W., sec.23 (Salt Lake Base and Meridian) to Halfway Wash, Nevada T.15S., R.69E., sec.6 (Salt Lake Base and Meridian).

The primary constituent elements of critical habitat determined necessary for the survival and recovery of these Virgin River fishes are water, physical habitat, and biological environment. The desired conditions for each of these elements are further discussed below.

Water—A sufficient quantity and quality of water (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species. This includes the following:

1. Water quality characterized by natural seasonally variable temperature, turbidity, and conductivity;

2. hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular life stages at certain times of the year; and

3. flood events inundating the floodplain necessary to provide the organic matter that provides or supports the nutrient and food sources for the listed fishes.

Physical Habitat—Areas of the Virgin River that are inhabited or potentially habitable by a particular life stage for each species, for use in spawning, nursing, feeding, and rearing, or corridors between such areas:

1. River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats; and

2. areas with slow to moderate velocities, within deep runs or pools, with predominately sand substrates, particularly habitats which contain boulders or other instream cover.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to nonnative fish species in many areas. Fourteen introduced species, including red shiner (*Cyprinella lutrensis*), black bullhead (*Ameiurus melas*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*), compete with or prey upon the listed fishes. Of these, the red shiner is the most numerous and has been the most problematic for the listed fishes. Red shiners compete for food and available habitats and are known to prey on the eggs and early life stages of the listed fishes. Components of this constituent element include the following:

1. Seasonally flooded areas that contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides and supports much of the food base of the listed fishes; and

2. few or no predatory or competitive nonnative species in occupied Virgin River fishes' habitats or potential reestablishment sites.

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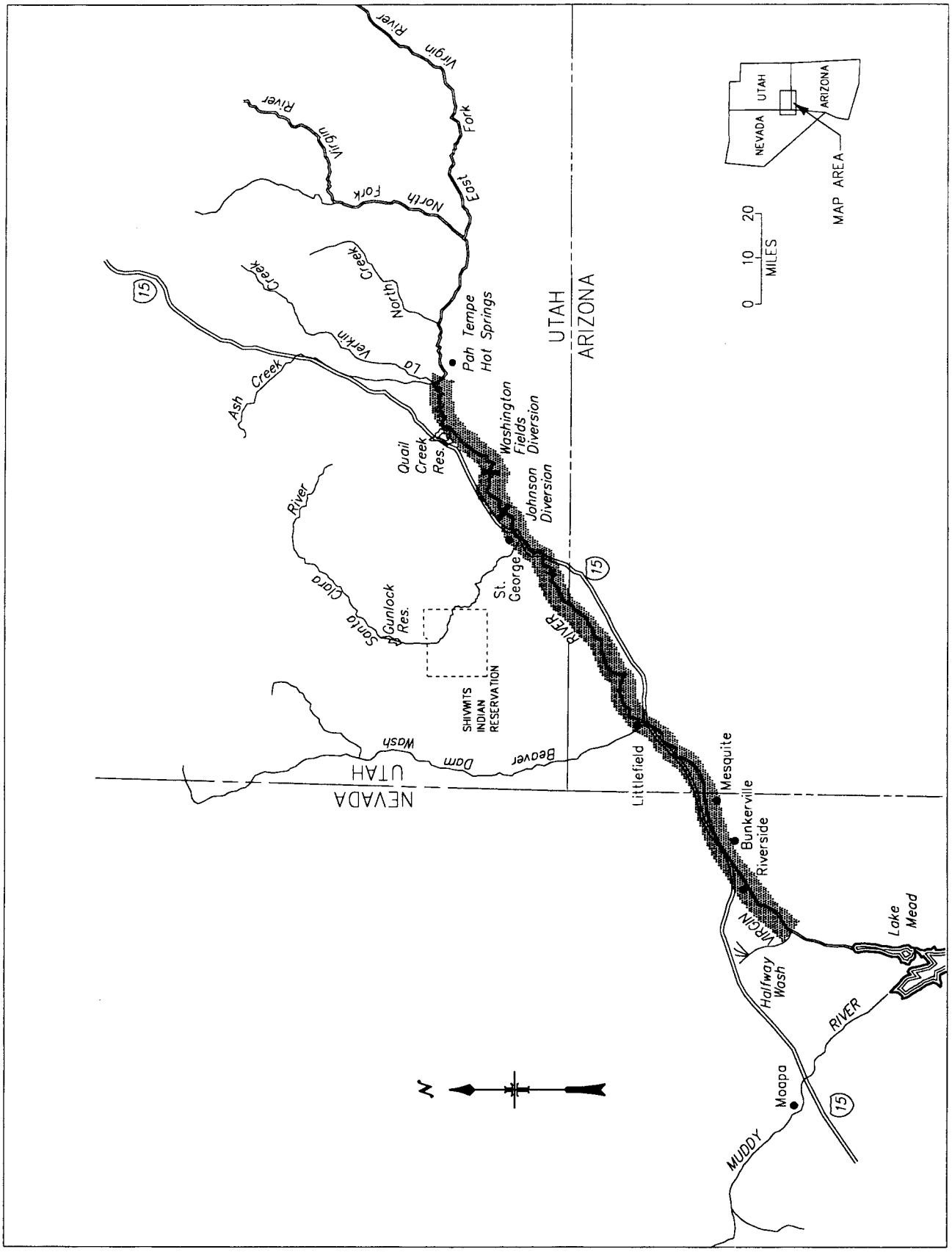
Virgin River
North Fork
East Fork
Virgin River
North Creek
Creek
15
Pah Tempe Hot Springs
UTAH
ARIZONA
NEVADA
UTAH
ARIZONA
MAP AREA
0 10 20
MILES
Ash Creek
Quail Creek Res.
Washington Fields Diversion
Johnson Diversion
River
Santa Clara
Gunlock Res.
St. George
RIVER
SHIVWITS INDIAN RESERVATION
Beaver Dam Wash
NEVADA
UTAH
Littlefield
Mesquite
Bunkerville
Riverside
VIRGIN
Lake Mead
Halfway Wash
RIVER
Moapa
MUDDY
15
N

Woundfin (*Plagopterus argentissimus*)

Legal descriptions for St. George (Utah–Arizona) and Littlefield (Arizona) were obtained from the 1987 BLM maps (Surface Management Status 30 x 60 Minute Quadrangles). Legal descriptions for Overton (Nevada–Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30 x 60 Minute Quadrangles). The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing at least one of the constituent elements are considered critical habitat. Critical habitat designated for the woundfin is as follows:

Utah, Washington County; Arizona, Mohave County; Nevada, Clark County. The Virgin River and its 100-year floodplain from its confluence with La Verkin Creek, Utah in T.41S., R.13W., sec.23 (Salt Lake Base and Meridian) to Halfway Wash, Nevada T.15S., R.69E., sec.6 (Salt Lake Base and Meridian).

The primary constituent elements of critical habitat determined necessary for the survival and recovery of these Virgin River fishes are water, physical habitat, and biological environment. The desired conditions for each of these elements are further discussed below.

Water—A sufficient quantity and quality of water (*i.e.,* temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species. This includes the following:

1. Water quality characterized by natural seasonally variable temperature, turbidity, and conductivity;

2. hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular life stages at certain times of the year; and

3. flood events inundating the floodplain necessary to provide the organic matter that provides or supports the nutrient and food sources for the listed fishes.

Physical Habitat—Areas of the Virgin River that are inhabited or potentially habitable by a particular life stage for each species, for use in spawning, nursing, feeding, and rearing, or corridors between such areas:

1. River channels, side channels, secondary channels, backwaters, and springs, and other areas which provide access to these habitats;

2. areas inhabited by adult and juvenile woundfin include runs and pools adjacent to riffles that have sand and sand/gravel substrates;

3. areas inhabited by juvenile woundfin are generally deeper and slower. When turbidity is low, adults also tend to occupy deeper and slower habitats;

4. areas inhabited by woundfin larvae include shoreline margins and backwater habitats associated with growths of filamentous algae.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to nonnative fish species in many areas. Fourteen introduced species, including red shiner (*Cyprinella lutrensis*), black bullhead (*Ameiurus melas*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*), compete with or prey upon the listed fishes. Of these, the red shiner is the most numerous and has been the most problematic for the listed fishes. Red shiners compete for food and available habitats and are known to prey on the eggs and early life stages of the listed fishes. Components of this constituent element include the following:

1. Seasonally flooded areas that contribute to the biological productivity of the river system by producing allochthonous (humus, silt, organic detritus, colloidal matter, and plants and animals produced outside the river and brought into the river) organic matter which provides and supports much of the food base of the listed fishes; and

2. few or no predatory or competitive nonnative species in occupied Virgin River fishes' habitats or potential reestablishment sites.

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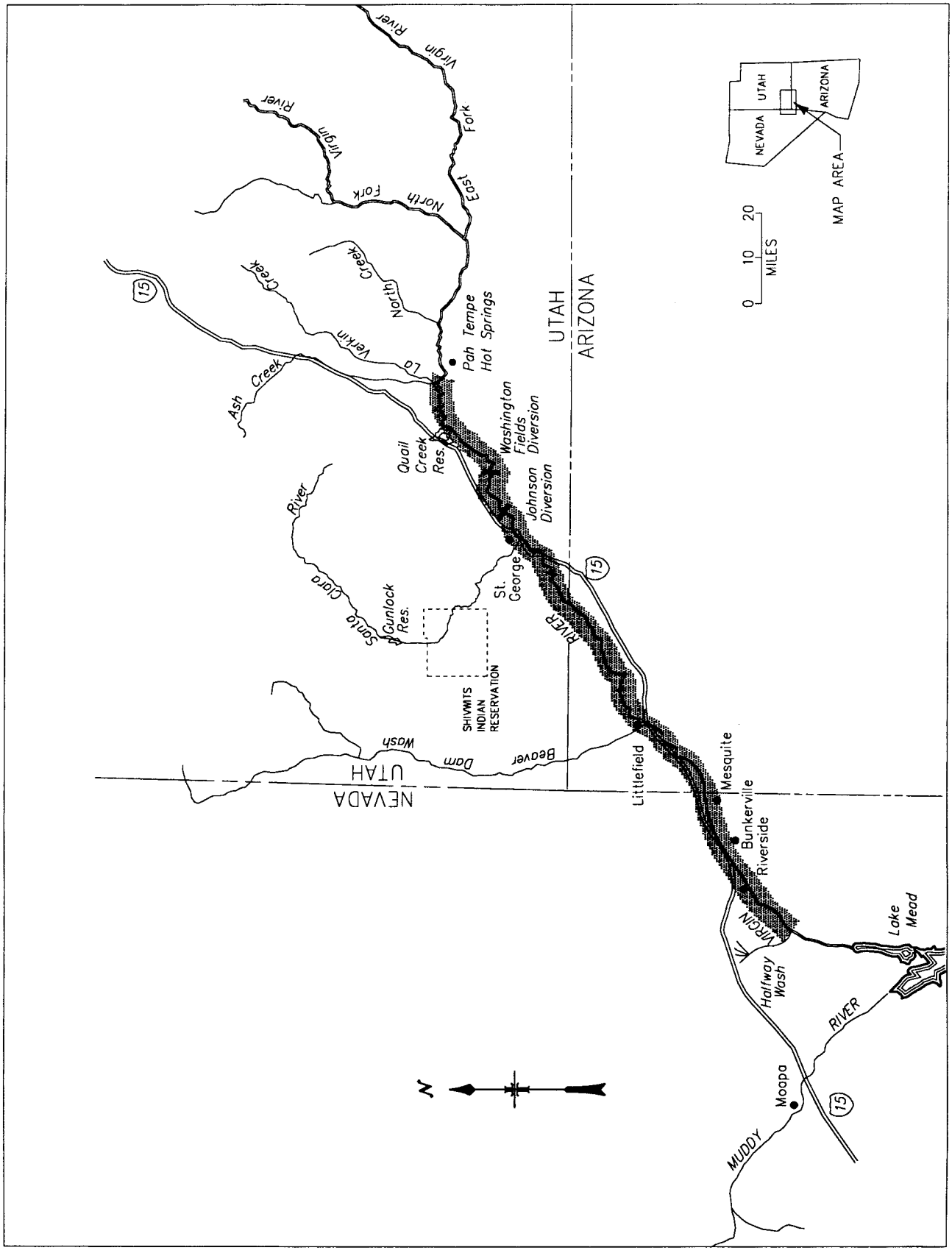
Virgin River
North Fork
East Fork
Virgin River
North Creek
Creek
15
Pah Tempe Hot Springs
UTAH
ARIZONA
Ash Creek
La Verkin
Quail Creek Res.
Washington Fields Diversion
Johnson Diversion
River
Santa Clara
Gunlock Res.
St. George
SHIVWITS INDIAN RESERVATION
RIVER
Beaver Dam Wash
NEVADA
UTAH
Littlefield
Mesquite
Bunkerville
Riverside
VIRGIN
Lake Mead
Halfway Wash
RIVER
Moapa
MUDDY
N
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UTAH
ARIZONA
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Dated: January 18, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00– 1746 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE23

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Larkspurs From Coastal Northern California

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 (Act) of 1973, as amended for two plants—*Delphinium bakeri* (Baker's larkspur) and *Delphinium luteum* (yellow larkspur). These species grow in a variety of habitats including coastal prairie, coastal scrub, or chaparral in Sonoma and Marin Counties in northern California. Habitat loss and degradation, sheep grazing, road maintenance activities, and overcollection imperil the continued existence of these plants. Random events increase the risk of extinction to the extremely small plant populations. This rule implements the Federal protection and recovery provisions afforded by the Act for these two species.

EFFECTIVE DATE: February 25, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W2606, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6464; facsimile 916/414–6486).

SUPPLEMENTARY INFORMATION:

Background

Delphinium bakeri (Baker's larkspur) and *D. luteum* (yellow larkspur) were found historically in coastal prairie, coastal scrub, or chaparral habitats. Urban development, agricultural land conversion, and livestock grazing have destroyed much of the habitat and extirpated numerous populations of these two plants in coastal Marin and Sonoma Counties in northern California. The historical range of *Delphinium bakeri* and *D. luteum* did not extend beyond coastal Marin and Sonoma Counties.

Ewan (1942) described *Delphinium bakeri* based on type material collected by Milo Baker in 1939 from Coleman Valley, Sonoma County, California. In the most recent treatment, Warnock (1993) retained the taxon as a full species. Historically, *D. bakeri* was known from Coleman Valley in Sonoma County and from a site near Tomales in Marin County. *Delphinium bakeri* occurs on decomposed shale within the coastal scrub plant community from 120 to 150 meters (m) (400 to 500 feet (ft)) in elevation (California Natural Diversity Database (CNDDB) 1997).

Delphinium bakeri is a perennial herb in the buttercup family (Ranunculaceae) that grows from a thickened, tuber-like, fleshy cluster of roots. The stems are hollow, erect, and grow to 65 centimeters (cm) (26 inches (in)) tall. The shallowly five-parted leaves occur primarily along the upper third of the stem and are green at the time the plant flowers. The flowers are irregularly shaped. The five sepals (outer most whorl or set of floral parts) are conspicuous, bright dark blue or purplish, with the rear sepal elongated into a spur. The inconspicuous petals occur in two pairs. The lower pair is oblong and blue-purple; the upper pair is oblique and white. Seeds are produced in several dry, many-seeded fruits, which split open at maturity on only one side (*i.e.*, several follicles). *Delphinium bakeri* flowers from April through May (Warnock 1993).

Habitat conversion, grazing, and/or roadside maintenance activities have extirpated occurrences of *Delphinium bakeri* in Marin and Sonoma Counties (California Department of Fish and Game (CDFG) 1994). The CDFG (1994) also reported the species is declining. The only known remaining population, with a total of about 35 plants, is found on a steep road bank on private and county land in Marin County that is threatened by road work, overcollection, and sheep grazing. Because of its extreme range restriction and small population size, the plant is also vulnerable to extinction from random natural events, such as fire or insect outbreaks (CNDDB 1997).

Heller (1903) described *Delphinium luteum* based on type material collected from ''grassy slopes about rocks, near Bodega Bay, along the road leading to the village of Bodega'' in Sonoma County. Although Jepson (1970) reduced *D. luteum* to a variety of *D. nudicaule*, it is currently recognized as a full species (Warnock 1993). *Delphinium luteum* occurs on rocky areas within coastal scrub plant community, including areas with active rock slides, from sea level to 100 m (300 ft) in elevation (Guerrant 1976).

Delphinium luteum is a perennial herb in the buttercup family (Ranunculaceae) that grows from fibrous roots to 56 cm (22 in) tall. The leaves are mostly basal, fleshy, and green at the time of flowering. The flowers are cornucopia-shaped. The five conspicuous sepals are bright yellow, with the posterior sepal elongated into a spur. The inconspicuous petals occur in two pairs. The upper petals are narrow and unlobed; the lower petals are oblong to ovate. The fruit is a follicle. *Delphinium luteum* flowers from March to May.

Never widely distributed, historical populations of *Delphinium luteum* have been partially or entirely extirpated by rock quarrying activities, overcollecting, residential development, and sheep grazing, resulting in the species now being even more narrowly distributed (Guerrant 1976; CNDDB 1998; Betty Guggolz, Milo Baker Chapter, California Native Plant Society (CNPS), pers. comm. 1995). The CDFG (1994) reported the species is declining. The two remaining populations near Bodega, both on private land, total fewer than 50 plants. Development, overcollection, and sheep grazing threaten the remaining two populations. Because of its extreme range restriction and small population size, the plant is also vulnerable to extinction from random natural events, such as fire or insect outbreaks (CNDDB 1998; B. Guggolz, pers. comm. 1995).

Previous Federal Action

Federal Government actions on the two species began as a result of section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Delphinium bakeri* and *D. luteum* as endangered. We published a notice on July 1, 1975 (40 FR 27823) of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and our intention to review the status of the plant taxa named in the report. The above two taxa were included in the

July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *D. bakeri* and *D. luteum* were included in this **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than two years old. In the December 10, 1979, notice (44 FR 70796), we published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

We published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Delphinium bakeri* and *D. luteum* as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, we published a supplement to the Notice of Review (48 FR 53640). This supplement changed *D. bakeri* and *D. luteum* from category 1 to category 2 candidates. Category 2 taxa were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules.

The plant notice was revised on September 27, 1985 (50 FR 39526). *Delphinium bakeri* and *D. luteum* were again included as category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision *D. bakeri* and *D. luteum* were included as category 1 candidates. We made no changes to the status of the two species in the plant notice published on September 30, 1993 (58 FR 51144). On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the use of candidate categories and considered the former category 1 candidates as simply ''candidates'' for listing purposes. Both species were included as candidates in the February 28, 1996, Notice of Review.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This provision applied to *Delphinium bakeri* and *D. luteum,* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, we found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1983 through 1994, and we published a proposed rule on June 19, 1997 (62 FR 33383).

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. 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 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 the fourth priority. 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. 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 distribution, status, and threats since publishing the proposed rule and to incorporate information obtained through the public comment period. This additional information did not alter our decision to list these species.

Summary of Comments and Recommendations

In the June 19, 1997, proposed rule (62 FR 33383) and associated notifications, 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 August 18, 1997. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties and requested comments. We sent copies of the proposed rule and the request for comments letter to seven local libraries for public display. We published newspaper notices in the *Press Democrat* and *Marin Independent Journal* on June 25, 1997; *Sonoma County Independent* on June 26, 1997; and *Petaluma Argus Courier* on June 27, 1997, which invited general public comment.

During the public comment period, we received written comments from five individuals or agencies. Three commenters expressed support for the listing proposal, and two commenters opposed the proposal. Supporting comments were received from the CNPS and two individuals from Washington State University. The two commenters from Washington State University sent a letter informing us of their research on the genetic variation in *Delphinium luteum*. Opposing comments were received by the Washington Legal Foundation and the Marin Farm Bureau. Opposing comments and other comments questioning the proposed rule were organized into specific issues. These issues and our response to each are summarized below.

Issue 1: One commenter stated that the Service should not list *Delphinium bakeri* and *D. luteum* because it has no authority to list or regulate species under the Act that are not involved in interstate commerce. This commenter further believed that Federal listing for *D. bakeri* and *D. luteum* is unnecessary since it would not confer greater protection than California State law already provides for these indigenous plants.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect these species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhapimodas terminatus abdominalis*). As with *Delphinum bakeri* and *D. luteum*, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate:

(1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and because doing so regulates commercial development that is part of interstate commerce.

Issue 2: One commenter urged us not to list *Delphinium bakeri* and *D. luteum*, stating that ''the listing of the two larkspurs violates the Principles of Federalism,'' and that ''California has ample resources to regulate and protect these two larkspur species,'' and (therefore) ''should be able to make its own decisions regarding these plants found within its own border.'' The commenter further stated that this listing has significant impacts on the rights of private property owners to make reasonable use of their property.

Our Response: As we stated in the proposed rule (62 FR 33383), existing State and local regulations are inadequate to protect these species. The Act does not prevent the State of California from protecting and regulating the two larkspur species. Federal and State regulations complement each other. As discussed further in Factor D of the ''Summary of Factors Affecting the Species'' section of this final rule, the California Environmental Quality Act (CEQA) and California Endangered Species Act (CESA) apply to actions on private and State lands. For plants, the Federal Endangered Species Act primarily covers Federal land and Federal actions that may affect proposed and listed species.

The listing of plants under the Federal Endangered Species Act does not necessarily restrict any uses of private land unless Federal funding, authorization, or a permit is involved. For example, such private land uses as proper livestock grazing, clearing a defensible space for fire protection around one's personal residence, landscaping (including irrigation), or fence maintenance are not affected by Federal listing of plants. If an activity is conducted, authorized, or funded by a Federal agency, the Federal action agency must consult with us when the activity may affect listed species.

Issue 3: One commenter was concerned that once an endangered species is listed, the designation of critical habitat under the Act would result in a taking of land. This commenter further stated that the ''take'' provision as applied to the two larkspurs will have a dramatic and disruptive impact on local land use and planning.

Our Response: As discussed in the ''Critical Habitat'' section of this final rule, a critical habitat determination is not being made at this time for these plants. The ''take'' prohibition, as defined in section 9 of the Act, generally does not apply to plants (except when such take is prohibited by state law or occurs in the course of a violation of state criminal trespass law).

Issue 4: One commenter said that we should consider the adverse economic effect that the listing would have on the local agriculture industry.

Our Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions,'' H.R. Rep. No. 97–835, 97th Cong., 2nd Sess. 19 (1982). As further stated in the legislative history, ''applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word 'solely' in the legislation,'' H.R. Rep. No. 97–835, 97th Cong. 2nd Sess. 19 (1982). Because we are precluded from considering economic impacts in a final decision to list a species, we cannot examine such impacts.

Issue 5: One commenter stated that the plants are in existence because of agriculture and not the opposite.

Our Response: As discussed under Factor A of the ''Summary of Factors Affecting the Species'' section of this final rule, historical habitat of *Delphinium bakeri* was eliminated by agricultural conversion. The discussion under Factor C explains that both species are limited in their range, have few individuals, and are extremely vulnerable to trampling.

Peer Review

In accordance with interagency peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. The three requested reviewers concurred with the accuracy of the rule and supported listing these taxa. Information provided was incorporated and is presented in the final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) that implement the listing provisions of the Act established the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Delphinium bakeri* Ewan (Baker's larkspur) and *Delphinium luteum* Heller (yellow larkspur) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* Of the two remaining populations of *Delphinium luteum*, one located at an old rock quarry site near Bodega has been partially destroyed and fragmented by historical quarry activities. The number of plants remaining at this site continues to decline. Population numbers were between 100 to 200 plants in 1978 (Ed Guerrant, Berry Botanic Garden, pers. comm. 1995), but recent counts indicate that only 30 to 40 individuals remain (B. Guggolz, pers. comm. 1995). The other extant site has fewer than 10 remaining individuals. A historical site near the town of Graton was converted to residential uses by 1987 (CNDDB 1997).

Historically, habitat of *Delphinium bakeri* was eliminated by agricultural conversion to grainfields (Ewan 1942). Remaining habitat may be threatened by sheep grazing (CNDDB 1997). One extirpated population was subjected to sheep grazing, but it is unknown if grazing was the primary cause of its demise. The few remaining individuals (approximately 35) are extremely vulnerable to impacts that otherwise might not be significant. Threats to the lone remaining site of *D. bakeri* are discussed under factors B through E. At the rock quarry site near Bodega Bay, the Bodega Harbor landowners association is proposing to build an equipment storage shed and a public trail that would be close to the remaining plants. Although the proposed storage equipment shed would be located on degraded habitat and would have no direct impact on the extant population of *D. luteum*, the public trail would be located adjacent to

the population. The proximity of the trail to the plants would increase the threat from collection (see factor B). Urban development, and its associated recreational activities, continue to threaten the remaining population of *D. luteum* (B. Guggolz, pers. comm. 1995). Although the project proponents have been notified that construction of the shed and trail may be detrimental to *D. luteum,* we understand that the project remains proposed as is.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* Overutilization is a threat for both species. In 1992, all the follicles (a single-celled cavity that acts like a many-seeded fruit, which upon drying splits open to release seeds) were collected from the plants at the only known site of *Delphinium bakeri* (CDFG 1993). Because these follicles contained the plants' seeds, all sexual reproduction for 1992 was lost. Were this collection to occur regularly or in conjunction with unrelated natural events (*e.g.*, fire), the species may be lost. Due to its distinctive yellow flowers, which is uncommon for larkspurs, *D. luteum* is of considerable horticultural interest. Collecting is thought to have extirpated at least one occurrence of *D. luteum* located southwest of Tomales (CNDDB 1997). Additionally, some of the historical decline to *D. luteum* can be attributed to collecting. *Delphinium luteum* was offered for purchase in horticultural trade journals during the 1940's and 1950's (Michael Warnock, Sam Houston University, pers. comm. 1994). Plants can still be procured from a local nursery, although their seed source is not from the wild. Garden-grown seed is also available through an international garden society (NARGS 1998). Both populations of *D. luteum* are near residential areas, about 30 m (100 ft) from the nearest house, and are subject to collecting. Unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this rulemaking.

C. *Disease or Predation.* Most *Delphinium* species are toxic to cattle but not sheep. Ewan (1942) noted that *Delphinium bakeri* did not appear to be poisonous to livestock. However, its toxicity has not been tested. Sheep grazing may threaten the plant (CNDDB 1997). One extirpated population was subjected to grazing, but it is unknown if grazing was the primary cause of its demise. The few remaining individuals (approximately 35) are extremely vulnerable to impacts that otherwise might not be significant. Although *D. luteum* has persisted at two sites with sheep grazing for many decades, because of the very low number of individuals in the population, any loss of flowers and/or seeds could significantly reduce chances for the long-term survival of this species (see Factor E).

D. *The Inadequacy of Existing Regulatory Mechanisms.* The California Fish and Game Commission (CFGC) listed *Delphinium bakeri* and *Delphinium luteum* as rare species in 1979 under the California Native Plant Protection Act (CNPPA) (Div. 2 Ch. 10, Section 1900 *et seq.* of the Fish and Game Code). Although the ''take'' of State-listed plants is generally prohibited under CNPPA (See Sec. 1908), the extent of protection for State-listed plants has been a matter of some uncertainty. CNPPA limits the State's ability to regulate or prohibit the take of plants during agricultural operations, timber harvesting, or mining assessment work, or removal of plants from certain facilities and right-of-way [see Sec. 1913 (a) and (b)]. Under another provision of CNPPA, landowners in some circumstances can remove plants after providing CDFG at least 10 days advance notice [see Sec. 1913(c)]. The scope of these exceptions to CNPPA take prohibition, and consequently to the protection for plants, are unsettled and suspect. State designation as a rare, threatened, or endangered species under the CNPPA does provide for consideration of impacts by State agencies under CEQA, described below.

The CEQA (chapter 2 section 21050 *et seq.* of the California Public Resources Code) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a mandatory finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare, threatened, or endangered plant or animal.'' Species that can be shown to meet the criteria for State listing and have been designated as rare, threatened, or endangered, such as *D. bakeri* and *D. luteum*, must be considered under CEQA guidelines (CEQA Section 15380). Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In a case that the lead agency decides that overriding considerations make mitigation infeasible, projects may be approved that cause significant environmental damage, such as destruction of State-listed species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved. In addition, revisions to CEQA guidelines have been proposed which, if implemented, may weaken protections for State-listed, rare, threatened, and endangered species.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* The remaining population of *Delphinium luteum* at the rock quarry may be threatened by users of a trail associated with the extension of an existing golf course into the current county scenic easement that exists on the site (B. Guggolz, pers. comm. 1995). This easement is not a conservation easement with us but may offer some limited, incidental protection to the species in terms of controlling development to protect the viewshed. However, the trail's close proximity to the remaining populations of *D. luteum* may increase the amount of collection of the species by people using the trail.

The remaining population of *Delphinium bakeri* occurs on a steep road bank that is adjacent to a county road in Marin County. Some potential exists for herbicide spraying and road maintenance activities that could be detrimental to this species due to the extremely low number of individuals that remain. The degree of threat that these activities pose to the remaining population of *D. bakeri* is uncertain at this time.

Because few populations and/or individuals remain, both *Delphinium bakeri* and *D. luteum* are likely threatened by genetic drift (random change in particular gene frequency that may lead to preservation or extinction of certain genes and an overall reduction of genetic variability). *D. bakeri* has 1 population consisting of 35 plants. *Delphinium luteum* has 2 populations, totaling fewer than 50 plants. Small populations often are subject to increased genetic drift and inbreeding as consequences of their small populations (Ellstrand and Elam 1993). A loss of genetic variability, and consequent reduction in genetic fitness, provides less opportunity for a species to successfully adapt to environmental change (Ellstrand and Elam 1993).

The combination of few populations, small number of individuals found within each population, narrow range, and restricted habitat make these two plant species susceptible to destruction

of all or a significant part of any population from random natural events, such as fire, drought, disease, or other natural occurrences (Shaffer 1981; Primack 1993). Random events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution become as limited as they have for both *Delphinium bakeri* and *D. luteum* (Primack 1993). Once a plant population becomes significantly reduced due to habitat destruction and fragmentation, the remnant population has a greater probability of extinction from random events.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining this final rule. Habitat loss and degradation, sheep grazing, inadequate regulatory mechanisms, naturally occurring events, small plant populations, road maintenance activities, and overcollection imperil the continued existence of these plants. *Delphinium bakeri* has 1 population with a total of 35 plants. *Delphinium luteum* has 2 small populations with a total of fewer than 50 plants. Both plant species are in danger of extinction throughout all of their range, and the preferred action is therefore to list *D. bakeri* and *D. luteum* as endangered. Other alternatives to this action were considered but not preferred because not listing or listing as threatened would not be consistent with the Act.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Delphinium bakeri* and *D. luteum* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Delphinium bakeri* and *D. luteum* would be prudent.

Due to the small number of populations both *Delphinium bakeri* and *D. luteum* are vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Delphinium bakeri* and *D. luteum* and have not found specific evidence of taking, vandalism, collection, or trade of either species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

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. While a critical habitat designation for habitat currently occupied by this species would not be likely to 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 informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for both *Delphinium bakeri* and *D. luteum.*

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, ''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 *Delphinium bakeri* and *D. luteum* has allowed 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 *Delphinium bakeri* and *D. luteum* 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 both *Delphinium bakeri* and *D. luteum* as soon as feasible, considering our workload priorities. Unfortunately, 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 (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. None of the populations of either species occur on Federal land. Although one of the populations occurs adjacent to a county road, we believe it is unlikely that any activities would occur that involve the use of Federal Highway funds. We anticipate few if any section 7 consultations for either species.

Listing these two plants would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan(s) also would describe site-specific management actions necessary to achieve conservation and survival of the two plants. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction any such plant. In addition, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued for the two species because they are not common in cultivation or in the wild.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy 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 Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

We believe that, based upon the best available information, the following actions will not likely result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, livestock grazing, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with consultation conducted under section 7 of the Act;

(2) Residential landscape maintenance (including irrigation) and the clearing of vegetation around one's personal residence as a firebreak.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands; and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 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, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. 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 collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* 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. This rule does not alter that information collection

requirement. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references in this document is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this final rule is Kirsten Tarp, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section); telephone 916/414–6464.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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 § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Delphinium bakeri	Baker's larkspur	U.S.A. (CA)	Ranunculaceae	E	681	NA	NA
*	*	*	*	*	*	*	
Delphinium luteum ...	Yellow larkspur	U.S.A. (CA)	Ranunculaceae	E	681	NA	NA
*	*	*	*	*	*	*	

Dated: December 15, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–1827 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE27

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Newcomb's Snail From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the Newcomb's snail (*Erinna newcombi*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater snail is restricted to the Hawaiian Island of Kauai. The distribution of this snail has greatly decreased from the known historic distribution, and the existing populations are presently limited to restricted habitats within six perennial streams on State land. The six known populations of Newcomb's snail and its habitat are currently threatened by predation by a non native predatory snail, two species of non native marsh flies, a non native fish, and two species of non native frogs. These populations are also subject to an increased likelihood of extirpation from naturally occurring events, including natural disasters such as hurricanes and landslides. This final rule implements the Federal protection provisions provided by the Act for Newcomb's snail.

EFFECTIVE DATE: This rule takes effect February 25, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Pacific Islands Manager, Pacific Islands Ecoregion (see **ADDRESSES** section) (808/541–2749; facsimile: 808/541–2756).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago comprises eight main islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii) and their offshore islets, plus the shoals and atolls of the Northwest Hawaiian Islands. The main islands and the northwestern chain were formed sequentially by basaltic lava that emerged from a crustal hot spot currently located near the southeast coast of the island of Hawaii (Stearns 1985). Hawaii is the youngest island in the chain and is characterized by gently sloping shield volcanoes and currently active lava flows. Volcanoes on the other islands are either dormant or extinct. Ongoing erosion has formed steep-walled valleys with well developed soils and stream systems throughout the chain. Kauai, the oldest and most northwesterly of the main islands, is characterized by high rainfall, deep valleys, numerous perennial streams, and luxuriant vegetation.

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968 and Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kauai. Newcomb's snail is unique among the Hawaiian lymnaeids in that the slender, tapering shape typically associated with the shells of lymnaeids has been completely lost. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 inches (in.)) long and 3 mm (0.12 in.) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell

morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. and A. Adams (Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus *Lymnaea*. Morrison (1968) opposed Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna*. Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie *et al.* (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi*. This scientific name is currently accepted for Newcomb's snail.

Newcomb's snail is an obligate freshwater species. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation, and there are no dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Dispersal of Newcomb's snail among stream systems is probably very infrequent due to their obligate freshwater habitat requirements. Historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. This life history differs greatly from the freshwater Hawaiian neritid snails (*Neritina* spp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). Larvae of these neritid snails can likely disperse across the oceanic expanses that separate the Hawaiian Islands and colonize streams on any or all of these islands. This dispersal capacity is not available to Newcomb's snail.

The specific habitat requirements of Newcomb's snail include fast flowing perennial streams with stable overhanging rocks, springs, rock seeps, and waterfalls (Michael Kido, University of Hawaii, *in litt.* 1994; Stephen Miller, U.S. Fish and Wildlife Service (Service), pers. obs. 1994; Polhemus *et al.* (1992); Burch 1968; Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kauai indicate that Newcomb's snail is rarely found in these main channels (Adam Asquith, Service, pers. obs. 1994; Don Heacock, State of Hawaii, Department of Land and Natural Resources, *in litt.* 1995; M. Kido, *in litt.* 1994, 1995; S. Miller, pers. obs. 1994a, b; Timbol 1983). The limited occurrence of this snail in main stream channels may be due to scouring by sediment, rocks, and boulders that are moved downstream during heavy rains. Consequently, available suitable habitat is generally associated with small feeder streams, seeps, and waterfalls.

The present known range of Newcomb's snail is limited to six stream systems. Each stream supports a single population of Newcomb's snail (A. Asquith, pers. obs. 1994; M. Kido, *in litt.* 1994; S. Miller, pers. obs. 1994a, b; Hubendick 1952). These populations are located in the Hanalei River, Kalalau Stream, the Lumahai River, the North Fork of the Wailua River, Makaleha Stream, and Waipahee Stream. Makaleha and Waipahee Streams both flow into Kapaa Stream. The populations fall into two groups; populations first observed prior to 1925 and populations observed since 1993. Five populations were identified prior to 1925. Three of these populations (Wainiha, Hanakapiai, and Hanakoa) no longer exist. Of the two remaining pre–1925 populations, one (Waipahee) is small and the other (Kalalau) is relatively large (see below). These data indicate that the number of populations of Newcomb's snail has been greatly reduced since 1925, perhaps by as much as 60 percent.

Since 1990, surveys of at least 46 streams, tributaries and springs on Kauai have located 4 previously unknown populations of Newcomb's snail (A. Asquith, pers. obs. 1994; D. Heacock, *in litt.* 1995; M. Kido, *in litt.* 1994, 1995; S. Miller, pers. obs. 1994a, b; Timbol 1983). Three of these populations are small (see below), and the fourth population has been described as large.

No historic information is available on the population sizes of Newcomb's snail. However, recent reports indicate that two of the six known populations of Newcomb's snail are relatively large, the Kalalau and Lumahai populations. The high density of individuals in the Kalalau population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper permanent waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller, pers. obs. 1994b). The total area occupied by these snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Little information on specific size or area is currently available for the population of Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido, *in litt.* 1995).

The population in Makaleha Stream is divided into two subpopulations. One subpopulation is estimated at 30 snails/m^2 (2 to 3 snails/ft^2) distributed over 2 to 3 m^2 (21 to 32 $ft2^2$) (M. Kido, *in litt.* 1994). This is considerably smaller than the previously described population in Kalalau Stream. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non native predators and the deliberate use by humans of one species of organism to feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs covers approximately 20 to 30 m^2 (212 to 318 ft^2) (S. Miller, pers. obs. 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/m^2 (1 to 3 snails/ft^2) (S. Miller, pers. obs. 1994a).

The sizes of the three other populations of Newcomb's snail have been characterized as small. The population in the Waipahee Stream is estimated to cover 5 to 10 m^2 (53 to 106 ft^2) with a density of approximately 50 to 80 snails/m^2 (4 to 8 snails/ft^2) (A. Asquith, pers. obs. 1994). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations (M. Kido, *in litt.* 1994, 1995). One subpopulation has approximately 10 to 20 snails/m^2 (1 to 2 snails/ft^1) and occupies 2 to 3 m^2 (21 to 32 ft^2) (M. Kido, *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations are reported to be small with very few snails (M. Kido, *in litt.* 1995). The population found in the North Fork of the Wailua River, is best described as short-lived.

Based on these data, we estimate that the six known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the two populations at Kalalau and Lumahai.

Previous Federal Action

The February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which

we have on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We published a proposed rule on July 21, 1997 (62 FR 38953), to list this species as threatened.

Based on all available information including comments received in response to the proposal (see Comments and Recommendations Section of this final rule), we have now determined Newcomb's snail to be threatened. The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. 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 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 the fourth priority. 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 Listing Priority Guidance. This final rule is a Priority 2 action. We have updated this rule to reflect any changes in information concerning distribution, status and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the July 21, 1997, proposed rule (62 FR 38953) and associated notifications, we requested interested parties to submit factual reports or information that might contribute to a final determination. The comment period was reopened and extended until December 15, 1997, to accommodate a request for a public hearing (62 FR 60676). We sent announcements of the proposed rule and notice of public hearings to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested comments. We also published announcements of the proposed rule in the *Honolulu Star-Bulletin, Honolulu Advertiser* (Oahu), and the *Garden Island* (Kauai) on August 8, 1997. We held a public hearing on December 3, 1997, in Lihue, Kauai, Hawaii. We accepted comments on the proposed rule until the extended comment period closed.

We received a total of 10 written comments on the proposed rule, 6 by mail and 4 at the public hearing. One Federal agency commented but neither supported nor opposed the proposal. Four Hawaii State agencies provided comments, two that supported the proposal, and two that were neutral. One Kauai County agency indicated support for our efforts in the identification of species habitat areas and in maintaining a census of species but was concerned that the development or maintenance of current or future water resources could be unnecessarily restricted by listing of the Newcomb's snail. The proposal was supported by one individual, one conservation organization and one scientific museum, and opposed by one nonprofit legal foundation. In addition, three commentors expressed support for the designation of critical habitat.

In accordance with our peer review policy promulgated July 1, 1994 (59 FR 34270), we solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for the Newcomb's snail. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis, including input of appropriate experts and specialists. We received from these experts written comments that provided additional information on numbers of populations and individuals, distribution, and editorial changes. We incorporated peer review comments into this final rule as appropriate.

A public hearing was requested by Hawaii's Department of Land and Natural Resources (DLNR). The hearing was held at the Outrigger Kauai Beach Hotel in Lihue, Kauai on December 3, 1997, with 13 attendees. Nine oral statements and four written comments were received during the hearing, and, with one exception, all commentors supported the listing. In addition, five commentors expressed support for the designation of critical habitat.

We considered all comments, including oral testimony presented at the public hearing, and also the comments from the peer reviewers who responded to our request to review the proposed rule. We grouped comments of a similar nature by issue and summarized as follows:

Issue 1: Critical habitat should be designated.

Response: This issue is addressed under the ''Critical Habitat'' section of this final rule.

Issue 2: Current or future water resources development or maintenance could be unnecessarily restricted by listing of the Newcomb's snail.

Response: Section 4(b)(1)(A) of the Act requires us to make listing decisions solely on the basis of the best scientific and commercial data available, without regard to economics or other similar impacts. The legislative history of this statutory provision makes clear that economic impacts may not be considered in determining whether a species should be listed as endangered or threatened: ''The addition of the word ''solely'' is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The committee strongly believes that economic considerations have no relevance to determinations regarding the status of species * * *'' (H.R. Rep. No. 97–835, 97th Cong., 2d Sess. 19, (1982). Therefore, we have not considered the impacts of listing on economic development in making this listing determination.

Issue 3: Listing of Newcomb's snail is premature at this time because further research is needed to provide information on how best to protect it.

Response: We believe that listing of Newcomb's snail is warranted at this time due to the factors addressed under the ''Summary of Factors Affecting the Species'' section of this final rule. The requirement that section 4 listing determinations be based on the ''best'' scientific and commercial data available requires us to consider the best information available at the time of the listing decision. Therefore, the threats facing the species and its habitat, the limited range, and relatively small population size are good indicators that this species warrants listing. Additional information, that may be needed to determine how best to protect the species, may be developed and used in the recovery planning process.

Issue 4: There are significant water resource and habitat-related questions that should be evaluated prior to imposing blanket restrictions on development in habitat areas.

Response: Again, it is not appropriate to consider impacts on economic development in making a determination to list a species (see response to Issue 2). Further, implementing the Act would not necessarily result in blanket land use restrictions. Under section 7 of the Act, Federal actions including funding,

licensing, and permitting that may affect the species will require consultation between the Federal action agency and us to insure the Federal action is not likely to jeopardize the continued existence of Newcomb's snail. Section 9 of the Act prohibits persons from ''taking'' listed species. Taking is defined to include significant habitat modification where it actually kills or injures the listed species. However, these provisions do not amount to ''blanket'' prohibitions on development. Section 10 of the Act provides for the issuance of permits for the incidental take of listed species resulting from otherwise lawful activities when sufficient protection for the species is provided.

Issue 5: One respondent asserted that listing this species would exceed the scope of the Federal commerce power under the Commerce Clause of Article I, section 8 of the U.S. Constitution.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders v. Babbitt,* 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied,* 1185 S. Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with Newcomb's snail, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce; and (2) Activities substantially affecting interstate commerce, because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends, and because doing so regulates commercial development that is part of interstate commerce.

Peer Review

The Service routinely has solicited comments from parties interested in, and knowledgeable of, species that have been proposed for listing as threatened or endangered species. The July 1, 1994, Peer Review Policy (59 CFR 34270) established the formal requirement that a minimum of three independent peer reviewers be solicited to review the Service's listing decisions. During the July 21, 1997, to December 15, 1997, comment period, the Service solicited the expert opinions of three biologists having recognized expertise in malacology and/or conservation biology to review the proposed rule. The Service received comments from all three reviewers within the comment period. All concurred with the Service on factors relating to the taxonomy, population models, and biological and ecological information.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that Newcomb's snail should be classified as a threatened species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Newcomb's snail (*Erinna newcombi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although modification of habitat is not an immediate threat, water development and diversion projects have been proposed within Newcomb's snail habitat in the past. For example, in 1994, a proposed water development project at Makaleha Springs (State of Hawaii 1994) threatened to destroy the population of Newcomb's snail at this site. This project was ultimately rejected by the State of Hawaii, Commission on Water Resource Management. However, the County of Kauai, Department of Water can submit a new application for future development of the water resources at Makaleha Springs.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting Newcomb's snail at the present time.

C. *Disease or predation.* Predation by the non native rosy glandina snail (*Euglandina rosea*) is a serious threat to the survival of Newcomb's snail. This predatory snail was introduced into Hawaii in 1955 (Funasaki *et al.* 1988), and has established populations throughout the main islands. The rosy glandina feeds on snails and slugs, and field studies have established that it will readily feed on native snails found in Hawaii (Hadfield *et al.* 1993). Furthermore, Kinzie (1992) demonstrated that the rosy glandina snail can fully submerge itself under water and feed on aquatic snails such as the Newcomb's snail. The rosy glandina has been observed on wet, algae-covered rocks of the Makaleha Springs Stream very near individuals of Newcomb's snail (S. Miller, pers. obs. 1994a), and is believed to prey on them. The rosy glandina snail has caused the extinction of many populations and species of native snails throughout the Pacific islands (Hadfield *et al.* 1993; Miller 1993; Hopper and Smith 1992; Murray *et al.* 1988; Tillier and Clarke 1983), and represents a significant threat to the survival of Newcomb's snail.

Predation on the eggs and adults of native Hawaiian lymnaeid snails by two non native species of *Sciomyzidae* flies also represents a significant threat to the survival of Newcomb's snail. Two species of marsh flies (*Sepedomerus macropus* and *Sepedon aenescens*) that feed on lymnaeid snails (Davis 1960) were introduced into Hawaii in 1958 and 1966, respectively, as biological control agents for a non native lymnaeid snail, *Fossaria viridis* (Funasaki *et al.* 1988). *Fossaria viridis* was targeted for biocontrol because it is an intermediate host of the cattle liver fluke (*Fasciola gigantica*) (Alicata 1938; Alicata and Swanson 1937). These authors misidentified *Fossaria viridis* as *Fossaria ollula,* as discussed in Morrison (1968). The non-native lymnaeid and the two biocontrol flies occur on Kauai as well as on other islands in Hawaii (Funasaki *et al.* 1988; Davis and Chong 1969; Davis 1960; Hubendick 1952). One of the marsh fly species has been observed at a site (Hanakoa Stream) where Newcomb's snail was historically recorded but is no longer present (S. Miller, pers. obs. 1994b). Another marsh fly was observed near the waterfall of a Kauai stream that had many dead lymnaeids in the waterfall plunge pool (S. Miller, pers. obs. 1994b). These biocontrol agents represent a significant threat to Newcomb's snail and other native lymnaeid snails.

Predation by several introduced aquatic species is also a possible threat to populations of Newcomb's snail (D. Heacock, *in litt.* 1997). These non native aquatic species include the green swordtail (*Xyphophorus helleri*), a fish introduced in 1922 for mosquito control; and two accidental introductions, the American bullfrog (*Rana catesbiana*), which was first recorded in 1867, and the wrinkled frog (*Rana rugosa*), which was first recorded in 1896 (State of Hawaii 1995).

D. *The inadequacy of existing regulatory mechanisms.* Newcomb's snail is not currently listed as an endangered or threatened species in

Hawaii. When this rule becomes effective and the species is listed under the Act, the State of Hawaii Endangered Species Act (HRS, sect. 195D–4(a)) will automatically be invoked. The State statute reads ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species pursuant under the provisions of this chapter.'' Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). However, without listing, none of these provisions would apply to Newcomb's snail.

Furthermore, current State and Federal regulatory mechanisms are inadequate to protect the species. All six of the known extant populations of Newcomb's snail occur in streams in conservation areas that are managed by the State of Hawaii primarily for watershed protection, including uses such as public drinking water, and cultural and agricultural activities. In 1987, the State of Hawaii established a Commission on Water Resource Management (CWRM) which, among other things, was responsible for issuing stream alteration permits for activities, such as water diversion and channelization, that impact Hawaii's streams and springs (State of Hawaii 1993). Since 1987, the State assumed control over all water in the State. Therefore, a State of Hawaii water permit is required for all aquatic activities such as withdrawal of water for public consumption, agricultural purposes (*i.e.*, irrigation), and stream modifications (channelization and realignment).

Protection of the streams in which Newcomb's snail occurs is inadequate under the existing State permitting process because it lacks requirements for the protection and conservation of sensitive aquatic biota. In 1992, the Hawaii State legislature passed a resolution that called for the CWRM to finalize, adopt, and implement a stream protection system, and in 1993, the CWRM appointed the Stream Protection and Management Task Force (Sierra Club Legal Defense Fund 1994). The task force made a series of recommendations on the information that should be included in stream permit applications and the types of activities that might be allowed in streams. In addition, the task force recommended for several streams, including some of the Kauai streams in which Newcomb's snail occurs, ''heritage'' status, which would have provided them with additional protection. The task force recommendations have not been adopted.

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States (33 CFR parts 320–330). Waters of the United States include navigable waters and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands. Section 404 regulations require that applicants obtain a permit for projects that involve the discharge of fill material into waters of the United States. Projects may qualify for authorization under several nationwide permits if the project falls below certain thresholds, such as affecting less than 1.2 hectares (ha) (3 acres (ac)) or less than 152 linear m (500 linear ft) of stream bed. Projects meeting the criteria for a nationwide permit are normally permitted with minimal environmental review by the Corps. However, if any listed species might be affected or is in the vicinity of the project, a prospective permittee may not begin work under the nationwide permit until the Corps satisfies the requirements of the Act. No activity is authorized by any nationwide permit if that activity is likely to jeopardize the continued existence of any listed species (see 33 CFR 330.4(f)).

Individual permits are required for the discharge of fill material into wetlands above the thresholds established by the nationwide permits. The review process for the issuance of individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, individual permit applications require alternative analysis and an assessment of cumulative wetland impacts is required for and there is a 30-day public review period. Resulting permits may include special conditions that require the avoidance or mitigation of environmental impacts. If a listed species is affected, the Corps must consult with us under section 7 of the Act.

Most of the Newcomb's snail populations are fairly small, and the habitat they occupy tends to be small seeps covering less than 1.2 ha (3 ac). Projects that may potentially impact this species could be permitted under the nationwide permit process with limited environmental review or notification because they generally fall under the nationwide permit thresholds. No other federally protected species found within the same or adjacent habitat would invoke a formal environmental review. Unless this species is listed, requiring the Corps to comply with section 7 of the Act, entire populations of the Newcomb's snail, or portions thereof, could conceivably be eliminated if fill material were discharged into the streams and seeps they occupy.

Federal regulations for the introductions of biocontrol agents have not adequately protected Newcomb's snail in the past. As a result, several non-native aquatic species and two non native fly species, which may be the most serious present threats to the Newcomb's snail's continued existence, were purposefully introduced by the State of Hawaii's Department of Agriculture or other agricultural agencies (Funasaki *et al.* 1988). Currently, our Pacific Islands Office reviews proposals to release biocontrol agents by the Hawaii State Department of Agriculture for potential effects on listed species. However, since post-release biology and host range are difficult to predict from laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992), the release or augmentation of non native species may pose threats to Newcomb's snail in the future.

E. *Other natural or manmade factors affecting its continued existence.* Because of the small, isolated nature of occurrences of Newcomb's snail, and the few individuals present in most of them, this species is also more susceptible to random events that may affect its continued existence. As indicated above, the six known populations of Newcomb's snail cover very small areas in settings that may be subjected to extreme effects associated with exceptionally heavy rainfall or hurricanes. Hurricanes struck the island of Kauai in 1983 and 1992. Rainfall associated with hurricanes can wash out streams (Polhemus 1993) and create landslides that can alter stream flow (Jones *et al.* 1984). Events such as these could destroy the habitat of Newcomb's snail or physically displace individuals into areas where they cannot survive.

Reduced stream flow due to water development projects, droughts, or other natural or human causes may have several potential negative effects on the ability of Newcomb's snail to complete its life cycle. Loss of water could reduce

or eliminate the habitat of Newcomb's snail and possibly lead to increased intraspecific competition or desiccation and death. Reduced water flow could also lead to increased predation by non native predators. Low flows may allow marsh flies or the rosy glandina snail easier access to individual snails that are otherwise protected by the force of water movement. Droughts are not uncommon in the Hawaiian Islands. Between 1860 and 1986 the island of Kauai was affected by 33 droughts, 20 of which significantly affected the available water supply on the island (Giambelluca *et al.* 1991). The development of water resources also is a continuing issue. These projects divert water from streams, springs and aquifers that may otherwise maintain habitats for Newcomb's snail.

Intentional or accidental introductions of snail predators constitute a significant threat to Newcomb's snail. The State of Hawaii continues to carry out an active program of introductions of biological control agents. These organisms are primarily introduced to control agricultural pests, and their impacts on native species have only recently been considered in evaluating release programs. The marsh flies and the rosy glandina snail are examples of biological control agents that were introduced to Hawaii without adequate assessment of their impact on Newcomb's snail or other native Hawaiian species.

Finally, the combined effects of numerous factors can degrade stream ecosystems, leading to a decline in snail population size and an increase in the likelihood of extinction from naturally occurring or human caused events.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Newcomb's snail (*Erinna newcombi*) as threatened. All populations are threatened or potentially threatened by predation by non native snails, flies, frogs, and fish; habitat destruction or modification from water development or diversion projects; habitat destruction or displacement of individuals by stream wash outs from heavy rainfall or landslides that can alter stream flow; and inadequate existing regulatory mechanisms. Currently, the 6 populations support 6,000 to 7,000 individuals but historical information indicates that the number of populations has been greatly reduced since 1925, perhaps by as much as 60 percent. Perhaps over 90 percent of the individuals are located in only two populations. The small sizes of four of the six populations and limited distribution make these populations vulnerable to extinction from reduced reproductive vigor or from random environmental events. Because this species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, this species fits the definition of threatened as defined in the Act. Therefore, the determination of threatened status for Newcomb's snail is warranted.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) That may require special management considerations or protection and; (ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Erinna newcombi* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Erinna newcombi* would be prudent.

Due the small number of populations, *Erinna newcombi* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Erinna newcombi* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

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. While a critical habitat designation for habitat currently occupied by this species would not be likely to 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 informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Erinna newcombi*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, 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 *Erinna newcombi* 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 *Erinna newcombi* 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 *Erinna newcombi* as soon as feasible, considering our workload priorities.

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 results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, 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, as amended, requires Federal agencies to evaluate their actions with respect to any species that is 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 in 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently 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 a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include the Corps authorization of projects such as the construction of drainage diversions, roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq*.) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq*.), U.S. Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System, and projects funded by U.S. Housing and Urban Development or Natural Resource Conservation Service funded projects.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), 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 listed 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 agents of the Service and State conservation agencies.

The Act and 50 CFR 17.32 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, you may also obtain permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy is 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 Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range. We believe that, based on the best available information, the following activities will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Scientific or recreational activities within the main channel of streams that support populations of Newcomb's snail, but exclusive of the specific sites known to support populations of this snail;

(2) Activities authorized, funded, or carried out by Federal agencies (if the species were found on Federal lands), (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

Potential activities involving Newcomb's snail that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Release, diversion, or withdrawal of water that results in displacement, disruption of breeding or feeding, or death of individual snails;

(2) Actions that lead to the destruction or alteration of the occupied habitat of Newcomb's snail (e.g., in-stream dredging, rock removal, channelization, discharge of fill material, actions that result in siltation of the habitat, and diversion of ground water flow required to maintain the habitat).

(3) Introduction of species that are predators or competitors of aquatic snails, especially non native snails in the family Lymnaeidae and the closely related family Physidae.

(4) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section).

You should direct questions regarding whether specific activities will constitute a violation of section 9 of the Act to the Manager of the Pacific Islands Ecoregion (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; facsimile 503/231–6243).

Hawaii State Law

As previously stated, Federal listing will automatically invoke listing under the State's endangered species act. State law prohibits taking of listed wildlife and plants in the State and encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of 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. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited in this rule, as well as other references, is available upon request from the Pacific Islands Ecoregion office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Dr. Steve Miller and Christa Russell, with contributions from Christine Willis, at telephone 808/541–3441 or facsimile 808/541–3470 (see **ADDRESSES** section). Recent data on the distribution of Newcomb's snail was contributed by Dr. Adam Asquith, US Fish and Wildlife Service, Pacific Islands Ecoregion.

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 section 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 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						
SNAILS							
*	*	*	*	*	*	*	
Snail, Newcomb's	*Erinna newcombi*	U.S.A. (HI)	NA	T	680	NA	NA
*	*	*	*	*	*	*	

Dated: December 31, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–1828 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–9347–01; I.D. 120299C]

Magnuson-Stevens Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Corrections

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

ACTION: Corrections to the 2000 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 2000 groundfish fishery specifications and management measures for the Pacific Coast groundfish fishery, which were published on January 4, 2000.

DATES: Effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kate King or Yvonne deReynier, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Background

The 2000 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 4, 1999 (65 FR 221). The specifications contained a number of errors that need to be corrected.

Corrections

In rule FR Doc. 99–33966 beginning on page 221, in the issue of Tuesday, January 4, 2000 (65 FR 221), make the following corrections:

1. On page 239, in the second column, in paragraph (11), delete the paragraph and replace it with ''(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, and the open access limit is smaller than the limited entry limit, then the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited

entry permit and uses open access gear, and the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear''.

2. On page 241, in the first column in paragraph A(16)(c), the first sentence should read ''Special provisions will be made for ''B'' platoon vessels later in the year so that the amount of fish made available in 2000 to both ''A'' and ''B'' vessels is the same''

3. Table 2 starting on page 241 is corrected to read as follows:

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Table 2. Minor Rockfish Species (excludes thornyheads)

Minor Rockfish (North of 40°10' N. lat.)	Minor Rockfish (South of 40°10' N. lat.)
NEARSHORE	NEARSHORE
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, S. nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	SHELF
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufinanus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufinanus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redbanded, S. babcocki
pinkrose, S. simulator	redstriped, S. proriger
pygmy, S. wilsoni	rosethorn, S. helvomaculatus
redbanded, S. babcocki	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinis
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigrocinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigrocinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	SLOPE
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
rougheye, S. aleutianus	Pacific ocean perch, S. alutus
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

BILLING CODE 3510–22–C

4. On page 241, in the third column, in paragraph A(20)(b), the first sentence should read ''Shelf rockfish consists of canary rockfish, shortbelly rockfish,

widow rockfish (*Sebastes entomelas*,) yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2''.

5. On page 247, in the second column, in paragraph D(1)(a)(i), remove ''Cape Mendocino'' and replace it with ''40°10′ N. lat.″.

6. On page 247, in the third column, in paragraph (D)((1)(b), delete ''Cape Mendocino'' and replace it with ''40°10′ N. lat.″.

7. On page 247, in the third column, in paragraph (D)(2), ''34≥'' is corrected to read ''34 inches''.

8. On page 248, in the third column, in paragraph B. (3), ''limited'' is corrected to read ''limit''.

9. On page 248, in the third column, in paragraph (B)(4) the paragraph should read ''Other rockfish are subject to the same trip limits as the limited entry fishery as published in this document. The limits will not change unless the tribal limits are separately changed.''

Dated: January 20, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–1841 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 012100A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf group king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, January 24, 2000, through June 30, 2000, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone was reached on January 23, 2000. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, January 24, 2000.

The Florida west coast subzone extends from 87°31′06″ W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4′ N. lat. (due east of the Miami-Dade/Monroe County, FL, boundary) through March 31, 2000; and (2) 25°48′ N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 2000 through October 31, 2000.

Classification

This action responds to the best available information recently obtained from the fishery. The reduced trip limit must be implemented immediately because 75 percent of the quota has been harvested. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

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

Dated: January 21, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–1807 Filed 1–21–00; 3:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 17
Wednesday, January 26, 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

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 99–023–1]

Importation of Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations concerning the importation of animal semen. Under this proposal, we would eliminate importation requirements for all canine semen from anywhere in the world and for equine semen from Canada. We believe these changes are warranted because canine semen and equine semen from Canada pose no threat of introducing diseases to U.S. livestock. This action would reduce regulatory requirements for the importation of semen while continuing to protect the health of U.S. livestock.

We also propose to require that other animal semen, except for equine semen from Canada, be imported only in shipping containers that bear the official government seal of the national veterinary service of the region of origin. This action would help prevent the importation of animal semen that does not meet the requirements of our regulations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 27, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–023–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–023–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, National Center for Import and Export (NCIE), VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 govern the importation of animal germ plasm to prevent the introduction of contagious diseases of livestock and poultry into the United States. Subparts A and B of part 98 apply to animal embryos, and subpart C (referred to below as ''the regulations'') applies to animal semen.

Canine and Mule Semen

Section 98.30 of the regulations defines terms used in subpart C. We propose to amend the definition of *Animals* in that section by removing dogs and mules from the definition. This change would eliminate importation requirements for canine semen.

We propose this action because canine semen does not pose a threat of introducing diseases to livestock. Further, because mules are sterile hybrids, mule semen is not collected. Therefore, we believe that it is not necessary to continue to regulate these items.

This change would reduce requirements for the importation of canine semen while continuing to protect the health of U.S. livestock.

Equine Semen From Canada

Section 98.36 of the regulations sets forth the requirements for importing animal semen from Canada. We propose to amend this section by eliminating importation requirements for equine semen from Canada.

We propose this action because Canada is free from contagious equine diseases that are transmitted by semen, including dourine and piroplasmosis. We realize that infectious equine anemia occasionally occurs in Canada, but that disease is not transmitted by semen.

If we remove the importation requirements for equine semen from Canada, we would no longer be able to determine whether equine semen imported into the United States from Canada originated in Canada or was imported into Canada from another region. However, equine semen imported into Canada must meet import requirements equivalent to those in place for the importation of equine semen into the United States. Therefore, we have determined that information on the origin of the equine semen imported into the United States from Canada is not necessary.

This change would reduce requirements for the importation of equine semen from Canada while continuing to protect the health of U.S. livestock.

Official Seals on Shipping Containers

We also propose to require that animal semen, except for equine semen from Canada, be imported in shipping containers sealed by an official seal of the national veterinary service of the region of origin and that the seal number of each shipping container be written on the health certificate accompanying the shipment. We also propose to specify that the imported semen must remain in the sealed container until arrival in the United States and, at the U.S. port of entry, an inspector determines that either: (1) The seal numbers on the health certificate and shipping container match; or (2) the seal numbers on the health certificate and shipping container do not match, but an APHIS representative at the port of entry is satisfied that the shipping container contains the semen described on the health certificate, import permit, declaration, and any other accompanying documents. Office International des Epizooties already requires that shipping containers of animal semen be sealed by an official seal of the national veterinary service of the region of origin. Therefore, it is standard industry practice to seal

containers of animal semen for importation into the United States with official seals. As such, we do not believe this change would have a significant effect on exporters or importers.

This action would help inspectors detect shipping containers of imported animal semen that may have been opened, and potentially had their contents removed, replaced, or tampered with, between the time the container was packed and the time it arrived in the United States. Therefore, this action would help prevent the importation of animal semen that does not meet the requirements of our regulations.

Plain Language

On June 1, 1998, President Clinton issued a memorandum requiring agencies to write all documents in plain language. Specifically, for regulations, agencies must use plain language in all proposed rules published in the **Federal Register** after January 1, 1999. Agencies must also use plain language in all final rules published in the **Federal Register** after January 1, 1999, except when the proposed rule was published before January 1, 1999. For existing regulations, the memorandum encourages agencies to rewrite in plain language whenever possible.

We try to make our regulations as clear as possible. With the plain language initiative, we will increase our efforts to use common terms, active verbs, personal pronouns, and short sentences. We will also use special formats, as well as other techniques, to make our regulations easier to understand.

In this proposed rule, we propose to use tables rather than traditional paragraphs for § 98.36. We would like your comments on whether the proposed table format for § 98.36 would make requirements easier to follow. Please send your comments on this issue, and any other discussed in this proposed rule, to the address listed in **ADDRESSES.**

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We propose to amend our regulations for importing animal semen. Under our proposal, we would eliminate importation requirements for canine and mule semen from anywhere in the world and for equine semen from Canada. This means that canine and mule semen from anywhere in the world, and equine semen from Canada, would no longer need an import permit, declaration, health certificate, or other document and would not have to meet any other requirements in our regulations when imported into the United States. We believe these changes are warranted because canine and mule semen from anywhere in the world, as well as equine semen from Canada, pose no threat of introducing diseases to U.S. livestock. This action would reduce requirements while continuing to protect the health of U.S. livestock.

This action would benefit U.S. importers of canine semen from anywhere in the world and equine semen from Canada because it would ease the importation of these products. (This action would have no affect on the importation of mule semen because mule semen is not collected and, therefore, not imported.) As noted above, importers of canine semen from anywhere in the world and equine semen from Canada would no longer need to obtain an import permit, health certificate, or declaration before importing the semen into the United States. This would slightly reduce the time and money required for the importation of these products. The principal monetary savings to affected importers would be the $39.50 per load fee currently charged for a permit to import animal semen into the United States (see table of user fees in 9 CFR part 130.8).

APHIS would also benefit from this action because we would no longer have to use our resources to issue import permits or perform other duties required by the regulations for the importation of canine semen from anywhere in the world or equine semen from Canada.

However, we believe that the benefits of this action would be small because of the apparently small volume of U.S. imports of canine semen from anywhere in the world and equine semen from Canada. Specific data on the volume of these imports is not available, which leads us to believe that the volume of those imports is relatively small. As a point of reference, the value of U.S. imports of bovine semen from all countries of the world in 1998 amounted to approximately $14 million. That means those imports comprised only 0.1 percent of the value of U.S. imports of all products of animal origin from all countries of the world in 1998. Because the volumes of U.S. imports of canine semen and equine semen were not reported as separate categories for 1998, we expect the value of those imports each amounted to less than $14 million.

We also propose to require that other animal semen from anywhere in the world, except for equine semen from Canada, be imported only in shipping containers that bear an official government seal. The seal number of each shipping container would have to appear on the health certificate that accompanies the shipment. This action would help prevent the importation of animal semen that does not meet the requirements of our regulations.

Because it is standard industry practice to seal containers of animal semen for importation into the United States with official seals, we do not believe this change would have a significant impact on exporters, importers, or APHIS. For veterinarians in the country of export, writing the seal numbers of the shipping containers on the health certificate accompanying the shipment and, for APHIS, checking to see that the seal numbers match would require a small amount of time, but we do not believe that would have a significant impact on affected persons.

The Regulatory Flexibility Act requires us to consider the economic impact of our rule changes on small entities. The businesses in the United States that would be affected by the proposed rule change are importers of canine semen from anywhere in the world and equine semen from Canada. The number of these businesses is not known, but there are probably few because of the apparently small volume of U.S. imports of canine and equine semen. Therefore, this action would likely not have an economic effect on a substantial number of U.S. businesses, large or small.

The businesses that would be affected are likely small in size, at least by the standards of the Small Business Administration (SBA). This assumption is based on SBA's information for providers of services involving animal semen, or similar services, in the United States. In 1993, there were 1,671 U.S. firms engaged in buying and/or marketing certain farm products, including animal semen. Of those 1,671 firms, 97 percent had fewer than 100 employees, the SBA's small entity threshold for such firms. In addition, in 1993, there were 6,804 U.S. firms engaged in performing certain services for pets, equines, and other animal specialities, including artificial insemination and breeding services. The per firm sales average of those 6,804 firms was $115,290, a figure well below the SBA's small entity threshold for such firms of $5 million. However, as previously discussed, this proposed rule

is not expected to have a significant economic effect on affected businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 98.30, the definition of *Animals* would be revised to read as follows:

§ 98.30 Definitions.

* * * * *

Animals. Cattle, sheep, goats, other ruminants, swine, horses, asses, zebras, and poultry.

* * * * *

3. Section 98.35 would be amended as follows:

a. By redesignating paragraphs (d)(7) and (d)(8) as paragraphs (d)(8) and (d)(9), and by adding a new paragraph (d)(7) to read as set forth below.

b. By adding a new paragraph (f) to read as set forth below.

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(d) * * *

(7) The seal number on the shipping container;

* * * * *

(f) All shipping containers carrying animal semen for importation into the United States must be sealed with an official seal of the national veterinary service of the region of origin. The health certificate must show the seal number on the shipping container. The semen must remain in the sealed container until arrival in the United States and, at the U.S. port of entry, an inspector determines that either:

(1) The seal numbers on the health certificate and shipping container match; or

(2) The seal numbers on the health certificate and shipping container do not match, but an APHIS representative at the port of entry is satisfied that the shipping container contains the semen described on the health certificate, import permit, declaration, and any other accompanying documents.

4. Immediately before § 98.36, the heading ''Canada'' would be removed.

5. Section 98.36 would be revised to read as follows:

§ 98.36 Animal semen from Canada.

(a) *General importation requirements for animal semen from Canada.*

If the product is . . .	Then . . .
(1) Equine semen	There are no importation requirements under this part.
(2) Sheep or goat semen	The importer or his agent, in accordance with §§ 98.34 and 98.35 of this part, must present: (i) An import permit; (ii) Two copies of a declaration; and (iii) A health certificate.
(3) Animal semen other than equine, sheep, or goat semen	See paragraph (b) of this section.

(b) *Importation requirements for animal semen other than equine, sheep, or goat semen from Canada.*

If the product is offered for entry at a . . .	And . . .	Or . . .	Then . . .
(1) Canadian land border port listed in § 98.33(b) of this part.	The donor animal was born in Canada or the United States and has never been in a region other than Canada or the United States.	The donor animal was legally imported into Canada, released to move freely in Canada, and has been released in Canada for no less than 60 days.	The importer or his agent, in accordance with § 98.35 of this part, must present: (i) Two copies of a declaration; and (ii) A health certificate.
(2) Canadian land border port listed in § 98.33(b) of this part.	The donor animal does not meet the special conditions listed above in paragraph (b)(1) of this table.		The importer or his agent, in accordance with §§ 98.34 and 98.35 of this part, must present: (i) An import permit; (ii) Two copies of a declaration; and (iii) A health certificate.
(3) Port not listed in § 98.33(b) of this part.			The importer or his agent, in accordance with §§ 98.34 and 98.35 of this part, must present: (i) An import permit; (ii) Two copies of a declaration; and (iii) A health certificate.

Done in Washington, DC, this 20th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–1803 Filed 1–25–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket No. 00–04]

Debt Cancellation Contracts

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is seeking comment on whether it is necessary or appropriate to issue regulations governing bank sales of debt cancellation contracts. Currently, no comprehensive Federal regulations specifically govern this activity. The purpose of this request for comments is to help us determine whether to issue a proposed rule covering bank sales of these products.

DATES: Comments must be received by March 27, 2000.

ADDRESSES: Please direct your comments to: Docket No. [00–04], Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities, at (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

Debt cancellation contracts (DCCs) are bank products that are contracts with a borrower providing for the cancellation of the borrower's obligation to repay an outstanding loan upon the occurrence of a certain event, such as the borrower's death or disability.

The authority of national banks to offer DCCs is well established. In 1963, the OCC concluded that offering DCCs was incidental to the express authority of a national bank to make loans, and was therefore a permissible activity pursuant to 12 U.S.C. 24(Seventh). We codified this interpretation in 1971, thus confirming a national bank's authority to sell DCCs. 12 CFR 7.7495 (1972). The Eighth Circuit Court of Appeals upheld the OCC's interpretation in *First National Bank of Eastern Arkansas* v. *Taylor,* 907 F.2d 775, *cert. denied,* 498 U.S. 972 (1990), holding that our construction of the statute was reasonable and that a national bank's ability to sell debt cancellation contracts was within the scope of the bank's powers authorized by 12 U.S.C. 24(Seventh).

In 1996, we amended the rule governing DCCs, which was renumbered as 12 CFR 7.1013, to provide that a national bank may offer DCCs that will cancel a debt obligation upon either the death or disability of the borrower.

Current § 7.1013 states that:

> A national bank may enter into a contract to provide for loss arising from cancellation of an outstanding loan upon the death or disability of a borrower. The imposition of an additional charge and the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of a national bank.

We further noted that, on a case-by-case basis, we may permit DCCs where the cancellation of the borrower's obligation is triggered by events other than death or disability. 61 FR 4849, 4852 (April 1, 1996).

We have not issued any regulations relating to DCCs since 1996, and there is currently no comprehensive Federal consumer protection scheme that covers national bank offerings of DCCs. The purpose of this advance notice of proposed rulemaking is to request comments on whether we should issue regulations governing DCCs, and if so, what specific provisions we should include in these regulations.

Comment Solicitation

We invite you to comment on all aspects of the issues presented in this advance notice of proposed rulemaking. Specifically:

1. Should we issue regulations governing DCCs that, for example, establish standards for the disclosure of terms, notices, contract termination, contract charges, and dispute resolution?

2. Should we include debt suspension agreements in any regulations covering DCCs?

3. Should we address other areas or issues by regulation? Commenters are invited to provide specific suggestions for provisions that would protect consumers, prohibit abusive practices, and ensure the safety and soundness of national banks.

In addition, commenters are invited to address the impact that a regulation governing DCCs would have on community banks. We recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, we specifically request comment on the impact that a regulation governing DCCs would have on community banks' current resources and available personnel with the requisite expertise, and whether the goals of this regulation could be achieved, for community banks, through an alternative approach.

Dated: January 13, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–1748 Filed 1–25–00; 8:45 am]

BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Size Standards for Compliance With Programs of Other Agencies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its size regulations. The proposed amendment requires an agency to consult in writing with SBA before proposing small business size standards for use in its programs, if those size standards are other than those established by SBA. It removes the requirement that the agency have the SBA Administrator's approval for the contemplated size standards prior to the proposed rule. Rather, the agency must seek the SBA Administrator's approval only before it adopts size standards in a final rule. As does the existing regulatory text, the proposed amendment sets forth the minimum information agencies must furnish the SBA Administrator to support its request for approval of its contemplated size standards.

DATES: SBA must receive comments on or before March 27, 2000. SBA will make all public comments available to any person or entity upon request.

ADDRESSES: Address all comments concerning this proposed rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: The Small Business Act (section 3(a)&(b), 15 U.S.C. 632) (Act) provides for the establishment of small business size standards. The Act authorizes the Administrator of SBA to ''specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act *or any other Act*'' (emphasis added). The Act thereby gives the SBA Administrator exclusive authority to establish small business size standards for all Federal agencies, in the absence of other specific statutory authority. Unless a statute specifically provides size standards for an agency's program or gives an agency authority to do so, the agency must use the applicable size standards established by the Administrator of SBA. However, the Act allows an agency to ''prescribe a size standard for categorizing a business concern as a small business concern'' (section 3[a][2][C]) of the Act) provided the contemplated size standard meets certain criteria and the agency first obtains approval of the SBA Administrator.

Currently, Small Business Size Regulations in 13 CFR 121.902 establish procedures for agencies, other than SBA, to follow before they prescribe size standards for their own use. These regulations require an agency contemplating the use of size standards different from those established by SBA to obtain the SBA Administrator's approval to do so before it proposes them for comment as part of its rulemaking process. If an agency believes that size standards different from those established by SBA are appropriate for its purposes, it must propose the specific size standards, explain why it believes they are appropriate for their intended purposes and why SBA's are not, and seek public comment on them. The proposed size standards must be specific and must meet the criteria set forth in the Act and SBA regulations.

This proposed rule is limited to modifying the procedure that agencies must follow when requesting the SBA Administrator's approval to use special size standards. If the rule is adopted, it will only require the agency to consult in writing with SBA's Office of Size Standards before proposing to use an alternative size standard. The agency will only be required to request the SBA Administrator's approval of the size standard before it publishes its final rule as part of its rulemaking process.

The written consultation must include what size standard the agency is proposing, to what program it will apply, how the agency arrived at this particular size standard for this program, and why SBA's existing size standards do not satisfy their program requirements. Such written consultation shall take place at least fourteen (14) calendar days before issuing the proposed rule. SBA believes that less than fourteen (14) calendar days is not sufficient time for SBA to review the proposed size standards and respond to the agency's consultation. The consultation will allow SBA to review the proposed size standards and advise the agency as soon as practicable of issues, such as those in conflict with the Act or SBA's Small Business Size Regulations. Such issues could become a bar to the SBA Administrator's approval, unless they are addressed. SBA's Office of Size Standards will acknowledge receipt of an agency's written consultation.

SBA intends that ''consultation,'' as it is described above, will fulfill the requirements of this proposed rule, and expects that there shall be no further required discussions, except at the option of the requesting agency. SBA is committed to ensuring that such consultation with the Office of Size Standards will not delay or otherwise interfere with the agency's rulemaking process.

This procedure will be a simpler one than now exists, because, if adopted, it will only require the SBA Administrator's approval before the agency issues its final rule adopting the contemplated size standards, rather than before it proposes them. It also will require the agency to furnish SBA a copy of the proposed rule at the time the agency publishes it for public comment. It is important to note that this is a procedural modification, and that SBA is not changing any substantive requirements.

SBA proposes to amend these procedures in its regulations for the following reasons:

1. It Will Streamline the Rule Making Process

Obtaining SBA approval for contemplated size standards prior to a proposed rule can encumber the process by which an agency implements legislation or otherwise fulfills its statutory mandates. The number of agencies seeking the SBA Administrator's approval has not been large. However, the number and complexity of requests from a small number of agencies, together with the limited time within which they must complete their actions, leads SBA to conclude that this modification is necessary. SBA has experienced a number of requests for approval of alternative small business size standards from agencies that are required to comply with Congressional mandates within limited time frames. Under SBA's existing regulations, which this rule amends, agencies frequently cannot seek and obtain the SBA Administrator's approval within time frames statutorily allowed.

2. The Prescribed Size Standards Adopted in an Agency's Final Rule May Not Be the Same as Those the SBA Administrator Had Approved for the Proposed Rule, Unless SBA Amends This Regulation

An agency may receive a large number of comments on its proposed size standards, and the comments may or may not support the proposal, to varying degrees. Comments to proposed rules weigh heavily on agency decisions concerning final rules. Therefore, it sometimes happens that an agency, after evaluating the comments it received, could issue a final rule with small business size standards that differ from those in the proposed rule. The agency's final rule will reflect public comments to the proposed rule. Because the authority to approve small business size standards resides solely with the SBA Administrator, SBA believes that the current procedures can have results inconsistent with the Act and congressional intent. It can also happen, though infrequently, that after an agency has reviewed and considered the comments, it will not issue any final rule. Rather, it may then issue another proposed rule, taking into consideration the comments it received. If the newly contemplated size standards are not the same as the agency originally proposed, the agency must request the SBA Administrator's approval a second time for this new proposal. This procedural change, if adopted, will let an agency determine, after considering public comments, what size standards it believes it should include in its final rule, or whether it will elect to use the SBA size standards. SBA, for its part, will review no more than one request, based on the agency's decision relative to its final rule.

3. An Agency That Contemplates Using Small Business Size Standards, Other Than Those Established by SBA, Will Have SBA's Input Before It Issues Its Proposed Rule

SBA intends the written consultation to be considerably simpler than a request for the SBA's approval before a proposed rule, and will not delay the rulemaking proceedings of the agency. It will give SBA the background and supporting information for the agency's contemplated size standards. SBA can then, if necessary, comment on the contemplated size standards, and provide the agency with further advice and direction on formulating the size standards and its reasons for proposing them. This can reduce future delays and possible barriers in the administrative process, when the agency requests the SBA Administrator's approval to prescribe the size standards in its final rule.

4. SBA Will Have, as Part of Its Decision Making Process, the Requesting Agency's Proposed Rule, Its Explanation and Justification for the Standards, Copies of the Public Comments to the Size Standards in the Proposed Rule, as Well as a Draft Copy of the Agency's Intended Final Rule

In its final rule the agency will address the comments and justify adopting the size standards. Under existing regulations, which this rule proposes to change, after reviewing the comments received and reaching its final decision based on them, an agency only notifies SBA of its intent to publish a final rule, and furnishes this information to SBA. SBA believes comments can and do provide a requesting agency with more information to justify the size standards it elects to implement, whether they are the same as it proposed or not. Without this procedural change, SBA will continue to be asked to approve size standards on which interested parties have not commented. Commenters may raise important issues regarding the size standards that an agency needs to consider before making its decision on the size standards. Based on the comments, the requesting agency may opt for size standards that differ from what it had proposed. Since the Act precludes an agency from prescribing size standards that SBA has not approved, the agency would have to resubmit it for SBA approval. By simplifying these procedures, SBA will have at hand and be able to evaluate the same information the requesting agency uses.

This proposal will only change the procedures an agency must follow when it requests the SBA Administrator's approval to prescribe size standards, other than those promulgated by SBA, for its programs. It changes no substantive requirement or small business criteria in connection with requesting the Administrator's approval. The proposed change will, SBA believes, simplify the rulemaking process for other agencies and for itself, without compromising the statutory requirement that other agencies obtain the SBA Administrator's approval for size standards they contemplate prescribing for their use. Similarly, when an agency contemplates using alternative size standards for its Regulatory Flexibility Analysis, this proposed rule does not change the Regulatory Flexibility Act requirement that it consult with SBA's Office of Advocacy before it does so.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this rule, if adopted, would not be a significant rule within the meaning of Executive Order 12866. It will not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition. SBA has made this determination for the following reasons: 1) The proposed change is procedural, not substantive, in nature; (2) the proposed change applies to Federal agencies only; and (3) the proposed change applies only when a Federal agency contemplates categorizing an entity as a small business concern for its programs using standards other than those established by SBA. SBA has also made this determination based on the nature, number and complexity of requests from Federal agencies that have made such requests. SBA does not believe that this amendment will increase the nature, number or frequency of these requests.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications.

For purposes of Executive Order 12988, SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this proposed rule, if promulgated as a final rule, would not have a significant economic effect on a substantial number of small entities since the procedure applies to the work of federal agencies and imposes no burden on small businesses. For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small business.

Accordingly, SBA proposes to amend part 121 of 13 CFR as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.902 is revised to read as follows:

§ 121.902 What size standards are applicable to programs of other agencies?

The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless the agency and SBA agree otherwise.

3. Section 121.903 is revised to read as follows:

§ 121.903 May an agency use size standards for its programs that are different than those established by SBA?

(a) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide SBA size standards are not suitable for their programs, then agency heads may establish more appropriate small business definitions for the exclusive use in such programs, but only when:

(1) The size standards will determine the size of a small manufacturing concern by its average number of employees based on the preceding twelve calendar months, determined according to § 121.106; the size of a small services concern by its average annual gross receipts over a period of at least three years, determined according to § 121.104; the size of other small concerns on data over a period of at least three years; or, other factors approved by SBA;

(2) The agency has consulted in writing with SBA's Assistant Administrator for Size Standards at least fourteen (14) calendar days before publishing the proposed rule which is part of the rulemaking process. The written consultation will include: what size standard the agency contemplates using; to what agency program it will apply; how the agency arrived at this particular size standard for this program; and, why SBA's existing size standards do not satisfy the program requirements.

(3) The agency proposes the size standards for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553;

(4) The agency provides a copy of the proposed rule, when it publishes it for public comment as part of the rulemaking process, to SBA's Assistant Administrator for Size Standards;

(5) SBA's Administrator approves the size standards before the agency adopts a final rule or otherwise prescribes them for its use;

(6) The agency's request to SBA for the Administrator's approval be accompanied by at least the following: copies of all comments on the proposed size standards received in response to the proposed rule; reasons for adopting size standards other than SBA's; a copy of the intended final rule, including the preamble, or a separate written justification for the intended size standards followed by a copy of the intended final rule and preamble prior to its publication; other information SBA may request in connection with the request; and certification that it complies with the Small Business Act (§ 3[a] & [b]) and with 13 CFR part 121; and

(b) When approving any size standards established pursuant to this section, SBA's Administrator will ensure that the size standards vary from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(c) Where the agency head is developing size standards for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish size standards different from SBA's which are more appropriate for such analysis.

4. Section 121.904 is added to read as follows:

§ 121.904 When does SBA determine the size status of a business concern?

For compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

Dated: January 14, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–1438 Filed 1–25–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–67–AD]

RIN 2120–AA64

Airworthiness Directives Boeing Model 747SP, SR, –100, –200, and –300 Series Airplanes Equipped with Pratt & Whitney Model JT9D–3, –7, –7Q, and –7R4G2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747SP, SR, –100, –200, and –300 series airplanes, that currently requires repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This action would require installation of a terminating modification, and would add repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This proposal is prompted by the results of a safety review of the thrust reverser systems on Model 747 series airplanes. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–67–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

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–67–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–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 21, 1995, the FAA issued AD 95–16–02, amendment 39–9321 (60 FR 39631, August 3, 1995), applicable to certain Boeing Model 747SP, SR, –100, –200, and –300 series airplanes, to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. That action was prompted by the results of an investigation, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

In the preamble to AD 95–16–02, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Since the issuance of that AD, the FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following a 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

• 747–78–2134, Revision 3, dated March 19, 1998, which describes procedures for installation of provisional wiring for the additional locking system on the thrust reversers.

• 747–78–2052, Revision 5, dated February 22, 1996, which describes procedures for removal of the thrust reverser sequencing mechanism and installation of a solenoid operated shutoff valve.

The service bulletins described previously reference the Boeing Standard Wiring Practices Manual, which describes wire installation procedures, and Boeing 747 Airplane Maintenance Manual (AMM) as additional sources of service information for accomplishment of the modifications.

• 747–78–2152, Revision 1, dated December 12, 1996; Revision 2, dated December 18, 1997; and Revision 3, dated August 26, 1999, which describe procedures for, among other things, installation of the following:

1. Four additional microswitches and associated wiring in the aisle stand P8 panel;

2. New relay panels P252 and P253 and associated wiring;

3. Left and right wing/body disconnect panels, engine struts, and associated wiring;

4. Four circuit breakers and associated wiring changes in the P6 and P8 panels; and

5. Sync lock and associated wiring on each thrust reverser.

Accomplishment of Boeing Service Bulletin 747–78–2152, Revision 1, Revision 2, or Revision 3, requires prior or concurrent accomplishment of Boeing Service Bulletins 747–78–2134, Revision 3, and 747–78–2052, Revision 5. Accomplishment of these actions would eliminate the need for certain repetitive tests.

The modification procedures described by Boeing Service Bulletins 747–78–2152 and 747–78–2134 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletins 747–78–2152, Revision 1, Revision 2, and Revision 3, and 747–78–2134, Revision 3, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and, therefore, proposes that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–16–02 to continue to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This proposed AD would require installation of a modification, and would add repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive functional tests to detect discrepancies of the actuation system lock (also called a sync lock) on each thrust reverser would be required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual (AMM). Correction of any discrepancy detected would be required to be accomplished in accordance with the AMM.

Differences Between Service Bulletins and This Proposed AD

Operators should note that, although Boeing Service Bulletin 747–78–2152, Revision 1, Revision 2, and Revision 3 recommend no specific compliance time for accomplishment of the additional lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that

it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify repetitive functional testing of the additional lock installation following accomplishment of that installation, the FAA has determined that repetitive functional tests of the additional lock installation on each thrust reverser, at intervals not to exceed 3,000 flight hours, will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 457 airplanes of the affected design in the worldwide fleet. The FAA estimates that 220 airplanes of U.S. registry would be affected by this proposed AD.

The operational tests that are currently required by AD 95–16–02, and retained in this AD, take approximately 16 work hours (4 per engine) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $211,200, or $960 per airplane, per test cycle.

It would take approximately 544 work hours per airplane, to accomplish the proposed wiring modifications, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the wiring modifications proposed by this AD on U.S. operators is estimated to be $7,180,800, or $32,640 per airplane.

It would take approximately 104 work hours (26 per engine) per airplane, to accomplish the proposed removal of the thrust reverser sequencing mechanism and installation of a solenoid operated shutoff valve, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the removal and installation proposed by this AD on U.S. operators is estimated to be $1,372,800, or $6,240 per airplane.

It would take approximately 568 work hours per airplane, to accomplish the proposed sync lock hardware installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $7,497,600, or $34,080 per airplane.

The functional tests proposed in this AD would take approximately 8 work hours (2 hours per engine) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $105,600, or $480 per airplane, per test cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9321 (60 FR 39631, August 3, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–67–AD. Supersedes AD 95–16–02, amendment 39–9321.

Applicability: Model 747SP, SR, –100, –200, and –300 series airplanes equipped with Pratt & Whitney Model JT9D–3, –7, –7Q, and –7R4G2 series 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 (e)(1) 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 ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–16–02

Operational Test

(a) Within 90 days after September 5, 1995 (the effective date of AD 95–16–02, amendment 39–9321), perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours until accomplishment of paragraph (c) of this AD.

Corrective Action

(b) If any of the tests required by paragraph (a) of this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct any discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Modifications

(c) Within 36 months after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) Install an additional locking system on each thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2152, Revision 1, dated December 12, 1996; Revision 2, dated December 18, 1997; or Revision 3, dated August 26, 1999.

(2) Remove the thrust reverser sequencing mechanism and install a solenoid operated shutoff valve in accordance with Boeing Service Bulletin 747–78–2052, Revision 5, dated February 22, 1996.

(3) Install provisional wiring for the additional locking system on the thrust reversers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2134, Revision 3, dated March 19, 1998.

Repetitive Tests

(d) Within 3,000 flight hours after accomplishment of paragraph (c) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual (AMM), Section 78–34–11, dated October 25, 1997. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair in accordance with the procedures described in the AMM. Repeat the functional tests thereafter at intervals not to exceed 3,000 flight hours.

Alternative Methods of Compliance

(e)(1) 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.

(2) Alternative methods of compliance, approved previously in accordance with paragraphs (a) and (b) of AD 95–16–02, amendment 39–9321, are approved as alternative methods of compliance with the corresponding paragraphs in this AD.

Note 2: 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

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

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1778 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–215–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 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 McDonnell Douglas Model DC–10 series airplanes. This proposal would require a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at a certain station to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. This proposal also would require installation of spacers between the galley power feeder cable clamps and fuselage structure. This proposal is prompted by reports indicating that the galley power feeder cables chafed against a certain fuselage frame in the forward lower cargo compartment, which resulted in electrical arcing. The actions specified by the proposed AD are intended to prevent such chafing and arcing due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99-NM–215–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

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–215–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–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of two incidents in which the galley power feeder cables chafed against the fuselage station Y=635.000 frame in the forward lower cargo compartment, which resulted in electrical arcing. These incidents occurred on McDonnell Douglas Model DC–10 series airplanes. Investigation revealed that there was insufficient clearance between the cables and the airplane structure. This condition, if not corrected, could cause arcing of the galley power feeder cables against the airplane structure, which could result in smoke and fire in the forward lower cargo compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999, which describes procedures for a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at station Y=635.000 to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. The corrective actions include repair or replacement of chafed cables with new cables; repair of damaged frames; and replacement of damaged insulation blankets with new insulation blankets. This service bulletin also describes procedures for installation of spacers between the galley power feeder cable clamps and fuselage structure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 168 airplanes of the affected design in the worldwide fleet. The FAA estimates that 103 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, 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 $12,360, or $120 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:

McDonnell Douglas: Docket 99–NM–215–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the galley power feeder cables against the airplane structure due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment, accomplish the following:

Inspection, Installation of Spacers, and Corrective Actions, If Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the galley external power feeder cables and fuselage structure at station Y=635.000 to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999.

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.''

(1) If any damage or chafing is detected, prior to further flight, accomplish the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) of this AD, as applicable, in accordance with Condition 2 of the Accomplishment Instructions of the service bulletin.

(i) Repair or replace the chafed cables with new cables.

(ii) Repair the damaged frame.

(iii) Replace the damaged insulation blanket with a new blanket; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install spacers between the galley power feeder cable clamps and fuselage structure.

(2) If no damage or chafing is detected, prior to further flight, install spacers between the galley power feeder cable clamps and fuselage structure in accordance with Condition 1 of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1777 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) 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 McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at a certain fuselage station to detect chafing and arcing damage, and corrective actions, if necessary; and installation of a standoff and clamp. This proposal is prompted by an incident in which the power feeder cables in the cabin electrical system were found to be chafed and arced against a fuselage frame due to insufficient clearance between the cables and airplane structure. The actions specified by the proposed AD are intended to prevent such chafing and arcing, which could cause smoke and fire in the overhead of the main cabin.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–214–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

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–214–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–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which the power feeder cables in the cabin electrical system had chafed and arced against the fuselage frame at station Y=1099.000 between longerons 9 and 10 (right side). The cable had burned in half, damaging

a three-inch section of the fuselage frame and adjacent insulation blankets. This incident occurred on a McDonnell Douglas Model DC–10 series airplane. The cause of the chafing was insufficient clearance between the electrical power cable and the fuselage structure. This condition, if not corrected, could result in smoke and fire in the overhead of the main cabin.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999. The service bulletin describes procedures for a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at station Y=1099.000 between longerons 9 and 10 (right side) to detect chafing and arcing damage; installation of a standoff and clamp at station Y=1093.000, longeron 10; and corrective actions, if necessary. The corrective actions involve repair or replacement of damaged power feeder cables, airplane structure, or insulation blankets with new parts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Typographical Error in Service Information

Operators should note the applicability statement of the proposed AD differs from the effectivity listing of the referenced service bulletin in that it includes McDonnell Douglas Model DC–10–15 series airplanes in the applicability statement. The service bulletin contains a typographical error that identifies Model ''DC–10–20'' series airplanes (which do not exist) as one of the affected models rather than Model DC–10–15 series airplanes. However, the manufacturer's fuselage numbers listed in the service bulletin corresponds to the affected Model DC–10–15 series airplanes. Therefore, the applicability statement of the proposed AD correctly refers to the subject service bulletin for the listing of affected airplanes.

Cost Impact

There are approximately 160 airplanes of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

The cost impact figures discussed above are 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:

McDonnell Douglas: Docket 99–NM–214–AD.

Applicability: Model DC–10 series airplanes and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the power feeder cables against the fuselage structure, which could cause smoke and fire in the overhead of the main cabin, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection of the power feeder cables in the cabin electrical system, airplane structure, and insulation blankets at station Y=1099.000 between longerons 9 and 10 (right side) for evidence of chafing and arcing damage, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect

obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Condition 1 Corrective Action

(1) If no chafing or damage to the power feeder cables, structure, or insulation blankets is detected: Prior to further flight, install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 1 of the Work Instructions of the service bulletin.

Condition 2 Corrective Action

(2) If any chafed power feeder cable is detected, and if no damage to adjacent structure or insulation blankets is detected: Prior to further flight, repair or replace the power feeder cables in the cabin electrical system with new power feeder cables; and install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 2 of the Work Instructions of the service bulletin.

Condition 3 Corrective Action

(3) If any chafed power feeder cable is detected, and if any damage to the adjacent structure and/or insulation blankets is detected: Prior to further flight, accomplish the actions specified in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this AD, as applicable, in accordance with Condition 3 of the Work Instructions of the service bulletin.

(i) Repair or replace the damaged power feeder cables in the cabin electrical system with new power feeder cables.

(ii) Repair or replace the damaged structure with new structure.

(iii) Repair or replace the damaged insulation blankets with new insulation blankets; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install a standoff and clamp at station Y=1093.000, longeron 10.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1776 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 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 all McDonnell Douglas Model DC–10 series airplanes. This proposal would require a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. This proposal is prompted by a report of smoke coming out of the flight engineer's upper right circuit breaker panel, which was followed by circuit breakers popping and the panel lights going out. The actions specified by the proposed AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–213–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California. 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

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–213–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–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of

a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which smoke came out of the flight engineer's upper right circuit breaker panel which was followed by circuit breakers popping and the panel lights going out. This incident occurred on a McDonnell Douglas Model DC–10 series airplane. Investigation revealed that the wire segments of the wire bundle routed through the feed through behind the flight engineer's station had been damaged. This condition has been attributed to excessive preloading of the support clamp and bracket during manufacturing. Such excessive preloading caused the wire bundle support clamp to rotate, which resulted in the wire bundle contacting the lower edge of the feed through. This condition, if not corrected, could result in chafing of electrical wires and consequent electrical arcing, which could result in smoke and fire in the cockpit.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated May 6, 1999. The service bulletin describes procedures for a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed; and repair of the wires, and modification of the wire bundle support clamp on the aft side of the flight engineer's station, if necessary. The modification includes installation of a grommet around the lower edge of the feed through and new support bracket, and relocation of the wire bundle support clamp. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AD, 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 $18,000, or $60 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:

MCDONNELL DOUGLAS:

Docket 99–NM–213–AD.

Applicability: All Model DC–10 series airplanes, certificated in any category.

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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

Inspection

(a) Within 1 year after the effective date of this AD, perform a one-time detailed visual inspection to determine if the wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated May 6, 1999.

Note 2: For the purposes of this AD, a detailed 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.''

Corrective Actions

(1) For airplanes identified as Group 1 in the service bulletin: Accomplish paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, no further action is required by this AD.

(ii) If any damaged or chafed wire is found, prior to further flight, repair in accordance with the service bulletin;

(2) For airplanes identified as Group 2 in the service bulletin: Accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, within 1 year after the effective date of this AD, revise the wire bundle support clamp installation at the flight engineer's station in accordance with the service bulletin.

(ii) If any damaged or chafed wire is found, prior to further flight, repair the wiring, and revise the wire bundle support clamp installation at the flight engineer's station, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1775 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 Series Airplanes, and KC–10A (Military) 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 McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes. This proposal would require a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary. This proposal is prompted by incidents of smoke and electrical odor in the flight compartment and cabin area as a result of failure of circuit breakers. The actions specified by the proposed AD are intended to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–212–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

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–212–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–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Supplementary Information

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of smoke and electrical odor in the flight compartment and cabin area of McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that long-term use and break down of the internal components of the circuit breakers, manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation, contributed to internal overheating and arcing of the circuit breakers. This condition, if not corrected, could result in smoke and fire in the flight compartment and main cabin.

The subject circuit breakers on certain Model DC–10 series airplanes are similar to those on the affected McDonnell Douglas Model DC–9 series airplanes. Therefore, both of these models may be subject to this same unsafe condition.

Other Related Rulemaking

The FAA is considering further rulemaking for certain McDonnell Douglas Model DC–9 series airplanes to address the identified unsafe condition.

The FAA, in conjunction with Boeing and operators of Model DC–10 series

airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999. The service bulletin describes procedures for a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and replacement of any circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation with a new circuit breaker. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that the proposed AD would require replacement of any circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation with a new circuit breaker within 18 months after the effective date of this AD. The service bulletin recommends that the replacement should be accomplished within 12 months from the issuance of the service bulletin. In developing an appropriate compliance time for this proposed action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts. The FAA has determined that 18 months represents an appropriate interval of time allowable wherein an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, it would take approximately 80 work hours per airplane to accomplish the proposed inspection of the circuit breakers (over 700 installed on each airplane), 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 $1,440,000, or $4,800 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:

McDonnell Douglas: Docket 99–NM–212–AD.

Applicability: Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 18 months after effective date of this AD: Perform a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breaker in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, no further action is required by this paragraph.

(2) If any Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, prior to

further flight, replace the circuit breaker with a new circuit breaker in accordance with the service bulletin.

Spares

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker, part number 104–205–104, 104–210–104, 104–215–104, 104–220–104, 104–225–104, 104–230–104, 104–235–104, 104–250–104, 447–205–102, 448–205–102, 505–205–102, 506–205–102, 447–507–102, 448–507–102, 505–507–102, 506–507–102, 447–210–102, 448–210–102, 505–210–102, 506–210–102, 447–215–102, 448–215–102, 505–215–102, 506–215–102, 447–220–102, 448–220–102, 505–220–102, 506–220–102, 447–225–102, 448–225–102, 505–225–102, 506–225–102, 448–235–102, 505–235–102, 506–235–102.

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, Los Angeles 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, Los Angeles ACO.

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

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.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1774 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 Series Airplanes, and KC–10A (Military) 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 McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes. This proposal would require a one-time inspection of the wiring and wire bundles of the aft main avionics rack (MAR) to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushions inserts of the wiring clamps; and corrective actions, if necessary. This proposal is prompted by an incident in which the automatic and manual cargo door test in the cockpit was inoperative during dispatch of the airplane, due to wiring of the main avionics rack chafing against clamps as a result of the wire bundles being installed improperly during production of the airplane. The actions specified by the proposed AD are intended to ensure that the wires that route from the main wire bundles to the MAR and associated brackets, clamps, braces, standoffs, and clips are installed properly. Improper installation of such wiring and structure could cause chafing of the wires/wire bundles, which could result in electrical arcing, smoke, and possible fire in the MAR.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–211–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

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–211–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–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which the automatic and manual cargo door test in the cockpit was inoperative. This incident occurred on a McDonnell Douglas Model MD–11 series airplane during dispatch.

Investigation revealed the insulation of a wire located on the aft main avionics rack (MAR) was worn through, and that the wire shorted to a coax clamp. The wires that route from the main wire bundles to the MAR also were found contacting clamps at other locations of the MAR. The cause of such chafing has been attributed to improper

installation of the wire bundles in the MAR during production of the airplane.

Improper installation of the wires that route from the main wire bundles to the MAR or improper installation of the associated brackets, clamps, braces, standoffs, or clips could cause chafing of the wires/wire bundles, which could result in electrical arcing, smoke, and possible fire in the MAR.

The subject MAR on Model DC–10 series airplanes are similar to those on the affected McDonnell Douglas Model MD–11 series airplanes. Therefore, both of these airplanes may be subject to the same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

On April 13, 1999, the FAA issued AD 99–09–03, amendment 39–11135 (64 FR 19689, April 22, 1999), applicable to certain McDonnell Douglas MD–11 series airplanes, to require one-time inspection of the wiring and wire bundles of the aft MAR to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary. However, this proposed AD would not affect the current requirements of that previously issued AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999, which describes procedures for a one-time general visual inspection to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary. The corrective actions include repairing damaged wiring; routing and tying all wires/wire bundles so that they are not in contact with adjacent wire bundles, clamps, or structure; installing silicone rubber coated glass cloth wrapping on wiring; and a general visual inspection of all brackets, clamps, braces, standoffs, and clips to make sure they are not bent or twisted and come in contact with wires/wire bundles. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and the Referenced Alert Service Bulletin

The alert service bulletin specifies the following corrective actions for certain conditions: realigning the rubber cushion and replacing the clamp. However, the alert service bulletin does not provide any instructions for accomplishment of those procedures or reference other service information. The FAA has verified with the manufacturer that the appropriate source of service information for accomplishment of those procedures is McDonnell Douglas Process Engineering Order DPS 1.834–7, Revision CF, dated June 29, 1999. Therefore, this AD requires that those actions be accomplished in accordance with the process engineering order.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection of the wiring and wire bundles, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $54,000, or $180 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 **ADDRESSESS.**

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:

McDonnell Douglas: Docket 99–NM–211–AD.

Applicability: Model DC–10–10, –15, –30, –30F, and –40 series airplanes and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999; 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 (g) 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 ensure that the wires that route from the main wire bundles to the main avionics rack (MAR) and associated brackets, clamps, braces, standoffs, and clips are installed properly, accomplish the following:

One-Time General Visual Inspection

(a) Within 60 days after the effective date of this AD, perform a one-time general visual inspection of the wiring and wire bundles of the aft MAR to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Where there are differences between this AD and the referenced alert service bulletin, the AD prevails.

Note 4: The wording ''main avionics rack'' in this AD and the wording ''main radio rack'' in the alert service are used interchangeably.

Corrective Actions

(b) If any damaged wring is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the alert service bulletin.

(c) If any wire/wire bundle is detected to be riding or chafing on the subject areas during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Route and tie all wires/wire bundles so they are not in contact with adjacent wire bundles, clamps or structure, and install silicon rubber coated glass cloth wrapping on wiring, if necessary, in accordance with the alert service bulletin.

(2) Perform a general visual inspection of all brackets, clamps, braces, standoffs, and clips to make sure they are not bent or twisted and do not come in contact with wires/wire bundles, in accordance with the alert service bulletin. If any of these parts is bent or twisted or is in contact with wires/wire bundles, prior to further flight, reposition in accordance with the alert service bulletin.

(3) Perform a general visual inspection of the clamps for proper alignment or for damage of the rubber cushion, in accordance with the alert service bulletin. If any clamp is not aligned properly, prior to further flight, realign the clamp in accordance with the alert service bulletin. If any rubber cushion is damaged, prior to further flight, replace the clamp in accordance with the alert service bulletin.

(d) If any damaged rubber cushion insert is detected during the inspection required by paragraph (a) of this AD, prior to further flight, replace the clamp with a new or serviceable clamp in accordance with McDonnell Douglas Process Engineering Order DPS 1.834–7, Revision CF, dated June 29, 1999.

(e) If any rubber cushion insert is out of alignment, prior to further flight, visually realign the cushion.

Reporting Requirement

(f) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(g) 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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) 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.

Issued in Renton, Washington, on January 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1773 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–24 and 00–ASO–1]

Proposed Establishment of Class E Airspace; Whitesburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal and Notice of Proposed Rulemaking.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) [Docket No. 99–ASO–24] which proposed to amend the Class E airspace at Wise, VA and proposes to establish Class E airspace at Whitesburg, KY, [Docket No. 00–ASO–1]. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Whitesburg Appalachian Regional Hospital. The operating status of the heliport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. The NPRM is being withdrawn as a result of the determination that the additional airspace to establish a point in space SIAP for Whitesburg Appalachian Regional Hospital, Whitesburg, KY, does not join the Wise, VA, Class E5 airspace.

DATES: Comments must be received on or before February 25, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–1, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ASO–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Whitesburg, KY. A GPS SIAP, helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Whitesburg Appalachian Regional Hospital. The operating status of the heliport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above teh surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

On December 17, 1999, a NPRM was published in the **Federal Register** to amend the Wise, VA, Class E5 airspace, to include a helicopter point in space approach which has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY, (64 FR 70610). It has been determined that the Whitesburg Appalachian Regional Hospital Class E5 airspace area would not join the Wise, VA, Class E5 airspace.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follow:

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

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows: Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Whitesburg, KY [New]

Whitesburg Appalachian Regional Hospital, Whitesburg, KY, Point In Space Coordinates
Lat 37°07′16″N, long. 82°50′34″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (lat. 37°07′16″N, long. 82°50′34″W) serving Whitesburg Appalachian Regional Hosptial, Whitesburg, KY.

* * * * *

Issued in College Park, Georgia, on January 12, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–1816 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AC32

Country of Origin Marking

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to restructure and clarify the country of origin marking rules set forth in part 134 of the Customs Regulations. These proposed amendments do not create any new marking requirements, but rather clarify the existing ones. These proposals are being made to promote the concept of informed compliance by the trade and proper field administration of the statutory requirements.

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Questions with regard to the following

subject areas may be directed to the following staff attorneys of the Special Classification and Marking Branch, (202) 927–2310: Definitions of ''country,'' ''country of origin'' and ''ultimate purchaser''—Kristen VerSteeg; Marking of containers—Monika Brenner; and Marking and certification requirements for processed and repackaged articles—Burton Schlissel.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a) of the Tariff Act of 1930 (hereinafter ''Tariff Act''), as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. 1304.

In view of the extensiveness of the marking requirements and exceptions under section 304, the regulations implementing this law by necessity are very detailed. Over the years Customs has received comments from various members of the trade community expressing difficulty in understanding their basic obligations under the marking statute. For example, importers have expressed difficulty in understanding when they or their transferees would be considered the ''ultimate purchaser'' under section 304, or when a container would have to be marked with its own origin.

Acknowledging these types of concerns and the fact that the current Customs Regulations may not sufficiently assist importers in meeting their statutory obligations, Customs announced in a Notice of modification of a country of origin marking ruling letter published in the Customs Bulletin (30 Cust. B. & Dec. 14 at 22) on April 3, 1996, that it would undertake a revision of 19 CFR part 134. In adherence to this commitment, Customs is now initiating significant restructuring and clarification of the provisions contained in part 134.

Customs believes that these proposals, which do not create any new marking requirements, but rather clarify the existing ones, will promote the concept of informed compliance by facilitating compliance by the trade and proper field administration of the statutory requirements. Customs is encouraged in this regard by the trade's positive response to its recent amendments relating to ''marking when name of country or locality other than country of origin appears'' (Treasury Decision (T.D.) 97–72), which made the regulations not only less rigid, but more consistent with Customs current practices. Below is a description of the proposed changes set forth in this document.

I. Restructuring of Part 134

During the course of this review of part 134, Customs discovered that one of the major reasons part 134 of the Customs Regulations is difficult to follow is due to the order of the provisions setting forth the marking requirements and exceptions under the statute. Presently, the subpart setting forth ''Exceptions to Marking Requirements'' is placed in the regulatory scheme after the subpart concerning ''Marking of Containers or Holders''. We believe that the logical sequence would be to place the subpart pertaining to ''exceptions'' to the marking requirements immediately following the subpart containing the general marking requirements. Moreover, since a majority of the marking requirements for containers arise in connection with an article that is excepted from individual marking, we believe it makes it easier to understand the statutory requirements and is more conducive to informed compliance if the container marking requirements are set forth in the regulations after both the general marking requirements and exceptions for marking of individual articles. Accordingly, Customs is proposing that the order of subparts under part 134 be redesignated so that current subpart D (''Exceptions to Marking Requirements'') is redesignated as subpart C and current subpart C (Marking of Containers or Holders) is redesignated as subpart D.

II. Definition of ''Country''

The definition of the term ''country'' is found in ¶134.1(a), Customs Regulations (19 CFR 134.1(a)). In the past, Customs has relied upon advice received from the Department of State in making determinations regarding the ''country of origin'' of a good for marking purposes. For example, based upon instructions received from the Department of State, in T.D. 49743, dated November 10, 1938, Customs held that, as a result of a change in jurisdiction from Czechoslovakia to Germany in the Sudenten areas under German occupation, products manufactured in these areas and exported on or after the date of German occupation were considered products of Germany for country of origin marking purposes. In *United States* v. *Friedlaender* & Co., 27 C.C.P.A. 297 (February 26, 1940); C.A.D. 104 (1940), the court concurred with Customs decision that merchandise which had been exported at a time in which the Czechoslovakian location of manufacture was under German occupation should be marked to indicate ''Germany'' as the country of origin. Subsequently, acting upon information received from the Department of State that the boundaries of Czechoslovakia had been reestablished as they had existed prior to the date of occupation by Germany, Customs held in T.D. 51360, dated November 30, 1945, that articles manufactured or produced in Czechoslovakia after May 8, 1945, should be regarded as products of Czechoslovakia and marked accordingly.

More recently, by letter dated October 24, 1994, the Department of State notified the Department of the Treasury that, in view of certain developments, principally the Israeli-PLO Declaration of Principles on Interim Self-Government Arrangements (signed on September 13, 1993), the primary purpose of 19 U.S.C. 1304 would be best served if goods produced in the West Bank and Gaza Strip were permitted to be marked ''West Bank'' or ''Gaza Strip.'' Accordingly, in T.D. 95–25, published in the **Federal Register** (60 FR 17067) on April 6, 1995, Customs notified the public that, unless excepted from marking, goods produced in the West Bank or Gaza Strip shall be marked as ''West Bank'' or ''Gaza Strip'' and not contain the words ''Israel,'' ''Made in Israel,'' ''Occupied Territories-Israel,'' or words of similar meaning. Subsequently, upon receipt from advice from the Department of State that it considered the West Bank and Gaza Strip to be one area for political, economic, legal and other purposes, Customs notified the public that acceptable country of origin markings for goods produced in the territorial areas known as the West Bank or Gaza Strip include the following: ''West Bank/Gaza,'' ''West Bank/Gaza Strip'' ''West Bank and Gaza,'' ''West Bank and Gaza Strip,'' ''West Bank,'' ''Gaza'' and ''Gaza Strip.'' (*See,* T.D. 97–16, published in the **Federal Register** (62 FR 12269) on March 14, 1997).

Therefore, in light of Customs past reliance on advice from the Department of State, Customs is proposing that § 134.1(a), of the Customs Regulations (19 CFR 134.1(a)) be amended to allow

greater flexibility to encompass changes by the Department of State in the political recognition of territories and nation-states.

III. Definition of ''Country of Origin''

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809). Subtitle D of Title III addresses textiles and includes section 334 (codified at 19 U.S.C. 3592) which provides rules of origin for textiles and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of ''textiles and apparel products.'' Accordingly, on September 5, 1995, Customs published § 102.21, Customs Regulations (19 CFR 102.21), in the **Federal Register** (60 FR 46188), implementing section 334. Thus, with limited exceptions, effective July 1, 1996, the country of origin for a textile or apparel product is determined by a sequential application of the origin rules set forth in ¶ 102.21.

Section 334(b)(1) of the URAA sets forth general principles concerning how the origin of textile and apparel products should be determined, stating, in pertinent part, that the origin rules set forth in section 334 apply ''for purposes of the customs laws and the administration of quantitative restrictions * * * '' There is no dispute that section 304 of the Tariff Act of 1930 is a customs law. Although the current language of 19 CFR 134.1(b), which defines ''country of origin,'' previously has been modified to incorporate other recent legislative action (*e.g.*, the implementation of the North American Free Trade Agreement (NAFTA)), no reference is made to those rules affecting the determination of origin of textile and apparel articles. This document proposes to include such a reference.

IV. Definition of ''Ultimate Purchaser''

Section 304 requires that articles of foreign origin be marked as legibly, indelibly, and permanently as the nature of the article will permit to indicate to the *ultimate purchaser in the United States,* the name of the country of origin. Congressional intent in enacting the marking statute, was:

> that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will. *United States* v. *Friedlaender & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

The term ''ultimate purchaser'' currently is defined in § 134.1(d) of the Customs Regulations (19 CFR 134.1(d)) as ''the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the ''ultimate purchaser'' is the last person in the United States who purchases the good in the form in which it was imported.'' As an example of ''ultimate purchaser'', § 134.1(d) states that a U.S. manufacturer may be the ''ultimate purchaser'' if he subjects the imported article to a process which results in a substantial transformation, ''even though the process may not result in a new and different article.''

On the other hand, § 134.35(a) Customs Regulations (19 CFR 134.35(a)), which is currently set forth in the regulations under the subpart covering ''exceptions to marking requirements'', applies the principle of the decision in the case of the *United States* v. *Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) in determining the ultimate purchaser for non-NAFTA origin articles. Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the new and different article will be considered the ''ultimate purchaser'' of the imported article.

In *United States* v. *Gibson-Thomsen Co., Inc., supra* (1940), the court considered the acceptability of country of origin marking on imported merchandise which would be ultimately obscured by subsequent processing in the United States. Upon review of the legislative history of section 304(a), Tariff Act of 1930, the court found nothing to indicate that Congress intended to require that an imported article used as a material in the manufacture of a new article with a new name, character and use be marked so as to indicate the foreign origin of the material to the retail purchaser. Accordingly, the court concluded that the U.S. processor was the ''ultimate purchaser'' of the imported materials and held that the articles were properly marked upon importation.

While the incorporation of the *Gibson-Thomsen* decision into the Customs Regulations in general is appropriate, its placement in the subpart relating to ''exceptions to the marking requirements'' causes confusion in understanding the marking statute. The court in *Gibson-Thomsen* did *not* create a new marking exception to the marking requirements under section 304(a). Rather, the court provided an interpretation of when one of the elements of the marking requirement is satisfied, *i.e.*, the requirement that a good be marked until it reaches the ultimate purchaser in the U.S.

The example currently cited in § 134.1(d)(1), that a manufacturer who subjects the imported article to a process may be the ''ultimate purchaser'' *even though the process may not result in a new and different article* represents a glaring contradiction to the new name, character and use test of *Gibson-Thomsen, supra.* Therefore, Customs is proposing to amend the regulations to clarify that only the *Gibson-Thomsen* standard (which Customs has incorporated into the NAFTA Marking Rules) will be applicable for determining whether a U.S. processor of imported articles becomes the ''ultimate purchaser'' for purposes of section 304. This standard should be set forth in the definitions under ''general provisions'' as opposed to the subpart pertaining to the exceptions to marking requirements.

Also problematic for Customs and importers is the identity of the ''ultimate purchaser'' of an article supplied by one party to another, as a gift or other distribution outside the context of a direct purchase transaction. Customs has consistently ruled that when an article is provided as a gift or convenience, the donee or recipient is the ultimate purchaser and the article must be individually marked with its country of origin (*See* HRL 709964 (May 7, 1979), also published as Customs Service Decision (C.S.D.) 79–406, 13 Cust. Bull. 1609 (1979), where Customs held that the ''ultimate purchaser'' of imported plastic pencils distributed as giveaway advertising material was the donee).

However, in *Pabrini, Inc.* v. *United States,* 630 F. Supp. 360 (CIT 1986), the court discussed the identity of the ''ultimate purchaser'' of imported umbrellas distributed to race track patrons upon payment of the regular admission fee. The court observed that, although Customs had applied the requirements of the marking statute to gifts since 1924, the language of the current statute which specifically protects an ''ultimate purchaser in the United States'' was not adopted until 1938, as part of the Customs Administrative Act of 1938, chapter 679, section 3, 52 Stat. 1077 (*See* T.D. 40547, dated December 6, 1924, where six unmarked clocks purchased abroad as gifts for friends were denied entry). The court examined the congressional history of the 1938 statute and found no

evidence of congressional intent in the 1938 revision with respect to the meaning of the ''ultimate purchaser'', but noted that the term ''consumer'' had been used in colloquy at hearings before the subcommittee (*Pabrini, supra,* citing *Customs Administrative Act: Hearings on H.R. 8099 Before a Subcomm. Of the Comm. On Finance, United States Senate,* 75th Cong., 3d Sess. 57 (1938)). Ultimately, the court made no finding regarding the validity of 19 CFR 134.1(d), but determined that the race track patrons, by paying the price of regular admission, were not donees of gifts, but rather were the ''ultimate purchasers'' of the imported umbrellas.

Articles distributed in the context of an employer-employee relationship have been treated somewhat differently. In HRL 732793 (December 29, 1989), Customs held that the commercial employer, not the recipient of the gloves was the ''ultimate purchaser'' of disposable string knit gloves sold to the employer for distribution to their employees. (*See also* C.S.D. 89–89 (March 18, 1989); HRL 703319 (May 14, 1974); HRL 729800 (October 10, 1989); and HRL 734681 (October 16, 1992)).

Finally, there is the dichotomy which appears in the language of the current regulations, which provide that the ''ultimate purchaser'' of an article from a non-NAFTA country distributed as a gift is the recipient, but the ''ultimate purchaser'' of a similar article which is a good of a NAFTA country is the purchaser of the gift (19 CFR 134.1(d)(4)). Thus, in this instance, the identity of the ''ultimate purchaser'' is dependent upon the origin of the article, permitting disparate resolution for articles similarly distributed.

Therefore, in view of the absence of evidence of a contrary legislative intent or judicial interpretation, Customs is proposing to consider the ''ultimate purchaser in the United States'' for purposes of section 304(a) as representing only the person who is the last *purchaser in the United States,* as opposed to the last *recipient* in the United States, of the imported article in all cases regardless of either the origin of the imported article or the purpose for which the imported article is distributed.

Accordingly, in view of the foregoing discussions, Customs is proposing that § 134.35 be removed and that § 134.1(d) of the Customs Regulations (19 CFR 134.1(d)) be amended.

V. Revision of 19 CFR 134.1(d) Regarding Textiles

As previously indicated in the discussion of the definition of ''country of origin,'' the country of origin of textile or apparel products is generally determined in accordance with the Uruguay Round Agreements Act (URAA), *supra,* section 334 (codified at 19 U.S.C. 3592). A U.S. processor of foreign textile or apparel products is the ''ultimate purchaser'' of such articles if such processing effects a change in the country of origin (*i.e.,* a ''substantial transformation'') of the imported article under the section 334 rules of origin, which are implemented under 19 CFR 102.21. Customs has taken this position in numerous rulings based upon the fact that—(1) except for determining the origin of goods processed in Israel, section 334 applies for all ''origin'' determinations for purposes of the ''customs laws'', (2) section 304 of the Tariff Act is a customs law, and (3) the origin question in ''ultimate purchaser'' determinations involving U.S. processing is whether, as a result of such processing, the imported article is still of ''foreign origin''. *See,* HRL 559625 (January 19, 1996); *See also* HRL 559627 (June 27, 1996), and HRL 559760 (July 19, 1996). Therefore, for textile or apparel products within the scope of section 334, URAA, § 134.1(d) is proposed to be amended to expressly reflect that only § 102.21 rules are applicable for determining who is the ''ultimate purchaser'' on the basis of the post-importation processing in the U.S.

VI. Addition of Definition of ''Usual Containers''

Section 304(b) states in part that usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin. Currently, the term ''usual container'' is defined in § 134.22(d)(1), Customs Regulations. Since the statutory exception for section 304(b) applies to all ''usual containers'' used as such at the time of importation and not just to usual containers that are goods of a NAFTA country, to avoid confusion and promote clarity and understanding of the general marking requirements, Customs is proposing that the regulation establishing the definition of ''usual container'' be set forth in a more general area of part 134. Accordingly, Customs is proposing that § 134.22(d)(1) be removed and the text of that current section be moved to the general provisions of subpart A, as a new § 134.1(l). Other provisions relating to the marking requirements for usual containers should continue to be set forth in the specific subpart for containers with cross references to the definition in § 134.1(l) as appropriate.

VII. Articles Usually Combined

Section 134.14(b), Customs Regulations was promulgated pursuant to 19 U.S.C. 1304(a)(2) to provide that the marking on an imported article shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation. The phrase ''combined with another article'' was initially intended to refer to a combining of an imported article with another article without any process of manufacture or production and in such a manner that their separate identities are maintained and do not become integral parts of an article manufactured or produced in the U.S. *See* T.D. 49715 (October 4, 1938). As various rulings indicate, the scope of § 134.14 was expanded from the initial example provided therein regarding the combination of an imported article with a marked bottle. Accordingly, Customs is proposing to set forth another example to show that § 134.14 also refers to situations in which an imported article is later combined after importation with another article which is not necessarily a container.

VIII. Exceptions to Marking Requirements (Redesignated Subpart C)

1. To clarify that some of the provisions set forth under current § 134.32 pertain to articles that are not required to be marked under section 304 in the first instance, *e.g.,* as in current § 134.32(m) ''products of U.S. exported and returned'' or current § 134.32(j) ''articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation'', Customs is proposing that the first paragraph of current § 134.32 be amended. It is noted that it is proposed to redesignate current § 134.32 as § 134.22.

2. Current § 134.26 (proposed to be redesignated as § 134.34) discusses imported articles repacked or manipulated and current § 134.34 (proposed to be redesignated as § 134.24) pertains to certain repacked articles. In order to clarify the distinction between these two sections, Customs is proposing to amend current § 134.34 (proposed to be redesignated as § 134.24) to make it clear that this section only applies when both the articles and their containers are unmarked as to country of origin at the time of importation, but are intended to be repacked into containers that will be marked with the origin of the imported articles. Also, Customs is proposing to add an example to illustrate the circumstances in which certification

requirements may be imposed as part of the port director's discretion to authorize the marking exception under current § 134.32(d) (proposed to be redesignated as § 134.22(d)) when the articles will be repacked after release from Customs custody.

IX. Marking of Containers—General Requirements (Redesignated Subpart D)

Certain portions of the container marking regulations in part 134 which were promulgated by T.D. 72–262, 37 FR 20318 (1972), do not reflect current law or are otherwise out-of-date or unclear. As previously noted in this document, Customs is proposing that the definition for ''usual containers'' be moved to the General Provisions under subpart A. As discussed more fully below, additional modifications are needed to clarify the general requirements relating to the marking of containers. If the following changes are adopted, current §§ 134.23 and 134.24 will be removed and the provisions thereof that are not duplicative will be incorporated into § 134.32 which is proposed to be a revised and redesignated version of current § 134.22. Proposed § 134.32 will set forth the general requirements and exceptions for marking all containers.

1. Sections 304(a)(3)(A) through (K) of the Tariff Act (19 U.S.C. 1304(a)(3)(A) through (K)) provide for various circumstances where an article is excepted from the marking requirements. Section 304(b) of the Tariff Act (19 U.S.C. 1304(b)) generally provides that where an article is excepted from the marking requirements, its immediate container or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked to indicate to the ultimate purchaser the country of origin of such article. Section 304(b), however, excepts from marking usual containers in use as such at the time of importation.

In *Bausch & Lomb Inc.* v. *United States,* 17 CIT 790 (August 5, 1993), the United States Court of International Trade noted that while an importer of foreign origin eyeglass cases could insert eyeglasses into the cases so that the cases may be considered as ''usual containers in use as such at the time of importation'' and be excepted from marking pursuant to 19 U.S.C. 1304(b), the court stated that since the cases at issue were empty and were not being used as usual containers at the time of importation, the cases were required to be marked with their own origin at the time of importation.

It is clear from a reading of 19 U.S.C. 1304(b) that usual containers used as such at the time of importation are not required to be marked with their own country of origin whether or not they are goods of a NAFTA country. Therefore, proposed § 134.32 reflects that (1) any usual container, whether or not a good of a NAFTA country, which is used as such at the time of importation, is not required to be marked with its own country of origin and (2) any language pertaining to whether a usual container is disposable is not relevant.

2. Currently, § 134.22(a) implements 19 U.S.C. 1304(b) and states that where an article is excepted from the marking requirements, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article, whether or not the article is marked to indicate its country of origin. Also, current § 134.24(d)(2) requires the container to be marked with the country of origin of its contents in cases where the articles within the container are marked but the container is normally sold without being opened by the ultimate purchaser. To reconcile the overlap between these two provisions, the last portion of current § 134.22(a) pertaining to whether or not the article is marked is not set forth in proposed § 134.32. Current § 134.24(d)(1) is also removed because this section basically contains the same requirements that are set forth in current § 134.22(a) and (e) and repeated in proposed § 134.32(a) and (c).

3. As stated earlier, in *Bausch & Lomb, supra,* the court acknowledged that a usual container not in use as such at the time of importation is to be treated as an article, required to be marked pursuant to 19 U.S.C. 1304(a), and is not subject to the exception under 19 U.S.C. 1304(b). Current § 134.22(b), however, requires that a container or holder which itself is an imported article, shall be marked with its own origin in addition to any marking which may be required to show the country of origin of its contents. Current § 134.22(b) also requires, pursuant to Annex 311 of the NAFTA, that no such marking is required for any good of a NAFTA country which is a usual container.

Therefore, in proposed § 134.32, Customs is proposing to clarify current § 134.22(b) to distinguish between usual containers used as such at the time of importation, usual containers not used as such at the time of importation, and containers or holders which do not meet the definition of a ''usual container''. The last portion of current § 134.22(b) pertaining to the exception for usual containers not in use at the time of importation which is a good of a NAFTA country is proposed to be repeated in proposed § 134.32(c)(2)(i) as it was promulgated to implement a provision of the NAFTA Annex 311.

Proposed § 134.32 also reflects the removal of the last sentence in current § 134.22(d)(2) pertaining to a container which is imported empty. In addition, it is proposed to not set forth the contents of current § 134.24(c)(2) in the proposed revision as it essentially contains the same requirements as current § 134.22(b) (proposed to be contained in § 134.32(d)).

4. Currently, § 134.22(b) requires containers or holders to be marked with their own country of origin when they are treated as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Current §§ 134.23 and 134.24 provide for the marking of containers or holders designed and capable of reuse and those containers not designed for or capable of reuse (disposable vs. non-disposable containers). Customs believes the confusion created by some of these provisions stems from the incorrect premise that there is a necessary distinction between these categories of containers and the categories of ''usual'' versus ''non-usual'' containers. Since the statute exempts ''usual'' containers from individual marking when in use at the time of importation, every container should first be measured against the definition of ''usual container'' to see whether a statutory marking exemption is applicable. The provisions in current §§ 134.23 and 134.24, generally do not provide this approach. To eliminate the confusion and sometimes totally unnecessary distinctions drawn between containers which are disposable vs. non-disposable and imported empty vs. imported full, Customs is proposing to make the following regulatory changes: (1) remove current § 134.23(a) since all usual containers used as such at the time of importation are excepted from marking; (2) remove current § 134.23(b) since the substance of this provision is already incorporated in the definition of ''usual containers'', which Customs is proposing to be moved to subpart A of part 134; and (3) remove current § 134.24(a) since disposable containers are encompassed within the definition of ''usual containers''.

5. Current § 134.22(c) provides that containers or holders which bear the name and address of a person or company in the U.S. which is not the country of origin shall be marked, in close proximity to such address, with the origin of the contents. This section is analogous to current § 134.46 which,

prior to its recent amendment, required an article indicating the name of a geographic location other than the true country of origin of the article to be marked in close proximity and in comparable size lettering with the country of origin of the article preceded by the words ''Made in'', ''Product of'', or words of similar meaning. In a final rule published August 20, 1997, in the **Federal Register** (62 FR 44211, T.D. 97–72), Customs amended § 134.46 to require such special marking only if the name of the geographic location that is not the country of origin may mislead or deceive the ultimate purchaser as to the actual country of origin. Therefore, Customs is proposing to modify current § 134.22(c) (to be redesignated as § 134.32(e)) to mirror the new § 134.46.

6. Customs, in order to provide further clarity, is proposing that the requirements set forth in current §§ 134.24(b) and 134.24(c)(1), *i.e.,* pertaining to the marking of the outermost containers of disposable containers imported empty, be placed within § 134.32 (the wholly revised and redesignated § 134.22) which will provide the general marking requirements for containers. Customs is also proposing to move the requirements of current § 134.24(d)(2) and (3), to the general rules for marking containers in § 134.32.

7. Subsection (b) of 19 U.S.C. 1304 provides that where an article is excepted from the marking requirements pursuant to 19 U.S.C. 1304(a)(3)(F), (G), or (H), its usual container also shall not be subject to the marking requirements. Furthermore, 19 U.S.C. 1304(j)(1)(C) generally provides that where an article that qualifies as a good of a NAFTA country is excepted from the marking requirements pursuant to 19 U.S.C. 1304(a)(e)(E) or (I) or 19 U.S.C. 1304(j)(1)(B)(i) or (ii), its ''usual container'' shall not be subject to the marking requirements. Currently, § 134.22(e) implements the above statutory provisions. In order to clarify when these exceptions for marking ''usual containers'' are applicable, Customs is proposing that they be moved to the same section which sets forth the circumstances for required marking of usual containers. Accordingly, these exceptions are proposed to be set forth in the wholly revised and redesignated § 134.32.

X. Marking of Containers—Repacked and Processed Articles

Currently, § 134.32 contains the general exceptions to the marking requirements. *See also* 19 U.S.C. 1304(a)(3). Among the exceptions are articles set forth in current § 134.33, known as the ''J-list.''

In T.D. 83–155, dated October 24, 1983 (48 FR 33860), Customs amended part 134 by adding a new section, 19 CFR 134.25, which pertains to the repacking of ''J-list'' articles and articles incapable of being marked. While the articles subject to these exceptions are not required to be marked, the containers or holders of these articles are subject to the marking requirements. The new section was added to address the issue of repacking in the U.S. by the importer or a subsequent purchaser of articles excepted from marking, after release of such articles from Customs custody. In such cases, it was often found that the new container in which the article was repacked for sale to the ultimate purchaser was not marked, thus frustrating the intent of Congress that the ultimate purchaser in the U.S. be aware of the country of origin of the article.

To ensure that the importer properly mark the repacked articles if the importer does the repacking or that subsequent repackers are made aware of their country of origin marking obligations, § 134.25 currently requires importers to certify to the port director that: (a) if the importer does the repacking, the new container will be marked to indicate the country of origin of the article; or (b) if the article is sold or transferred, the importer will notify the subsequent repurchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

In addition, current § 134.25 specifically provides that if the importer fails to comply with the certification requirements, the importer may be subject to assessment of liquidated damages under 19 CFR 134.54 for failure to mark or redeliver merchandise released from Customs custody and marking duties pursuant to 19 U.S.C. 1304(h). This section further provides that the importer also may be subject to a penalty under 19 U.S.C. 1592, if fraud or negligence is involved.

By T.D. 84–127 dated July 2, 1984 (49 FR 22793), Customs added 19 CFR 134.26 to the regulations which was intended to cover those situations involving the repacking of marked articles in retail containers (*e.g.,* blister packs) after their release from Customs custody. As in current 19 CFR 134.25, § 134.26 currently requires the importer to certify to the port director that: (a) if the importer does the repacking, the country of origin information appearing on the article will not be obscured or concealed, or else the container will be marked in accordance with applicable law and regulation; or (b) if the article is sold or transferred, the importer will notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. As under current 19 CFR 134.25, under current § 134.26, the importer may be subject to the imposition of liquidated damages, marking duties and penalties for failure to comply with the notification and certification requirements.

Current §§ 134.25 and 134.26 were intended to apply to articles which are repacked after importation, and the repacker is not the 'ultimate purchaser'' under 19 CFR 134.1(d) as a result of operations performed in the U.S. In cases where the repacker is the ultimate purchaser neither the article nor the container in which it is repacked is required to be marked. Consistent with the foregoing, Customs has frequently held that ''repacking'' to an article that may have been further processed, but not substantially transformed. *See, e.g.,* HRL 734989 (June 23, 1993).

However, the language in current § 134.25 is imprecise and does not convey the intent, as noted, that the regulations were intended to cover not only those articles that are subject to mere repackaging but also articles that have been processed but not substantially transformed (or which have not become a good of the U.S. under the NAFTA Marking Rules). Current § 134.26 does cover articles 'repacked or manipulated''; however, this provision similarly fails to indicate that it is not applicable when the manipulation results in a substantial transformation. In addition, the penalty provisions in both sections do not spell out the extent of the importer's statutory liability, which continues (unless the notice requirements are satisfied) even though the article is sold or transferred to subsequent repackers until the article reaches the ultimate purchaser.

It is further noted that the heading of current 19 CFR 134.25 refers only to certain articles that are excepted from marking, *i.e.,* J-list articles and articles incapable of being marked. Since this provision should encompass all articles excepted from individual marking but not from marking on their containers upon repacking or processing, Customs is proposing that the title and body of the provision be amended to reflect that the certification requirements extend to such other articles.

Therefore, Customs is proposing changes consistent with the foregoing discussion to clarify the scope of current §§ 134.25 and 134.26, and the extent of

the importer's liability under 19 U.S.C. 1304(a):

In accordance with prior Customs rulings, these regulations are proposed to be amended to provide that the term ''repacker'' shall include a U.S. party who also processes the articles when such operations in the U.S. do not amount to a substantial transformation (including an origin change under the NAFTA Marking Rules). This definition will make clear that there may be more than one repacker, prior to transfer to an ultimate purchaser. Examples will illustrate how the importer's statutory liability continues through all repackers until the article reaches the ultimate purchaser unless the certification requirements under the regulations are satisfied.

The definition of ''repacker'' is proposed to be included as paragraph (b) in both proposed redesignated § 134.33 (which consists basically of current § 134.25) and § 134.34 (which consists basically of current § 134.26). Current paragraphs (b), (c), (d), and (e) of § 134.25 are proposed to become paragraphs (c), (d), (e) and (f), respectively, of proposed § 34.33; and paragraphs (b), (c), (d), (e) and (f) of current § 134.26 are proposed to become paragraphs (c), (d), (e), (f), and (g), respectively, of proposed § 134.34.

Finally, since, as proposed, paragraphs (b) of both proposed §§ 134.33 and 134.34 will include a processor within the definition of ''repacker,'' the heading of § 134.34 will reflect that the section covers only ''repacked'' articles. There is no necessity for the term ''manipulated'' included within the heading as it is currently included within § 134.26.

XI. Removal of 19 CFR 134.47

In a final rule published in the **Federal Register** (62 FR 44211) on August 20, 1997, T.D. 97–72, § 134.46 was amended to ease the requirement that whenever words appear on imported articles indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity and in comparable size lettering to those words preceded by the words ''Made in,'' ''Product of,'' or words of similar meaning. As a result of this amendment, the special marking requirements of § 134.46 are triggered only if the non-origin reference ''may mislead or deceive the ultimate purchaser as to the actual country of origin.''

Section 134.47 (19 CFR 134.47) provides that when as part of a trademark or trade name or there appears as part of souvenir marking, the name of a location in the U.S., or the words ''United States'' or ''America'', the article shall be legibly, conspicuously and permanently marked to indicate the name of the country of origin of the article preceded by ''Made in,'' ''Product of,'' or other similar words, in close proximity or in some other conspicuous location. Unlike § 134.46, § 134.47 does not require the name of the country of origin to appear in at least a comparable size lettering as the non-origin reference. Section 134.47 is also less stringent than § 134.46 in that the latter provision requires the country of origin to appear ''in close proximity'' to the non-origin reference, while the former provision only requires that the country of origin appear ''in close proximity to the U.S. locality information or in some other conspicuous location.''

Customs believes there is no legal or practical reason for maintaining the disparity between the special marking requirements set forth in § 134.47 and those set forth in § 134.46, as amended by T.D. 97–72. The purpose of the requirements in both provisions, when triggered, is the same: to prevent the ultimate purchaser from being misled or deceived as to the actual country of origin of the article. A reference to a place other than the country of origin on an imported article or its container has the same potential for misleading or deceiving the ultimate purchaser when it appears as part of a trademark, trade name or souvenir marking as when it does not. Therefore, if such marking may mislead or deceive the ultimate purchaser as to the actual country of origin, it is immaterial that such marking appears as part of a trademark, trade name or souvenir marking, and the special marking requirements of § 134.46, should be applicable. Accordingly, Customs proposes to remove § 134.47 from the regulations. If this proposal is adopted, § 134.46, when triggered, will apply to any non-origin type reference, including those that are part of a trademark, trade name or souvenir marking.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Regulatory Flexibility Act

Insofar as the proposed amendments merely clarify existing regulations, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The proposed amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Canada, Country of origin marking, Customs duties and inspection, Imports, Labeling, Marking, Mexico, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendment

It is proposed to amend part 134, Customs Regulations (19 CFR part 134) as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.1 (19 CFR 134.1) is proposed to be amended by revising paragraphs (a), (b) and (d) and adding a new paragraph (l) to read as follows:

§ 134.1 Definitions.

* * * * *

(a) *Country.* ''Country'' means the political entity known as a nation. In addition, colonies, possessions, or protectorates outside the boundaries of the mother county may be considered separate countries. For other territorial areas, advice received from the U.S. Department of State or appropriate interagency council will be considered for determining whether a particular

territorial area should be treated as a ''country'' for marking purposes.

(b) *Country of origin.* ''Country of origin'' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin'' within the meaning of this part; for a non-textile or non-apparel good of a NAFTA country, this determination will be made pursuant to the NAFTA Marking Rules. Except when determining whether a textile or apparel article is a product of Israel, the country of origin of all textile or apparel products will be determined in accordance with the rules set forth in § 102.21 of this chapter.

* * * * *

(d) *Ultimate purchaser.* The ''ultimate purchaser'' is generally the last person in the United States who purchases the good in the form in which it was imported.

(1) *Where a substantial transformation of an imported article has occurred as a result of processing in the United States.*

(i) *Non-textile or non-apparel products of a NAFTA country.* If a non-textile or non-apparel good of a NAFTA country will be used in the United States in manufacture, the manufacturer is the ''ultimate purchaser'' if it subjects the imported article to a process that would result in the good becoming a good of the United States under the NAFTA Marking Rules. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accordance with this part.

(ii) *Non-textile or non-apparel products other than goods of a NAFTA country.* If a non-textile or non-apparel imported article other than a good of a NAFTA country will be used in the United States in manufacture, the manufacturer is the ''ultimate purchaser'' if the processing results in a substantial transformation of the imported article, *i.e.,* the creation of a new article having a name, character, and use differing from that of the imported article, in accordance with the principle set forth in the case of *United States* v. *Gibson-Thompson Co.,* 27 C.C.P.A. 267 (C.A.D. 98).

(iii) *Textile or apparel products.* If an imported textile or apparel product will be processed in the United States, the processor is the ''ultimate purchaser'' if it subjects the imported article to a process that would result in the good becoming a good of the United States under § 102.21 of this chapter.

(2) *Where no substantial transformation of an imported article has occurred during processing in the United States.*

(i) *Non-textile or non-apparel products of a NAFTA country.* If a non-textile or non-apparel good of a NAFTA country will be used in manufacture in the U.S. and the manufacturing process does not result in one of the changes set forth in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ''ultimate purchaser'' and the article shall be marked in accordance with this part.

(ii) *Non-textile or non-apparel products other than goods of a NAFTA country.* For non-textile or non-apparel products other than goods of a NAFTA country, if the manufacturing process does not result in a substantial transformation of the imported article, then the consumer or user of the article who obtains the article after the processing will be regarded as the ''ultimate purchaser'' and the article must be marked in accordance with this part.

(iii) *Textile or apparel products.* If an imported textile or apparel product will be further processed in the United States and the processing does not result in one of the changes set forth in § 102.21 of this title as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ''ultimate purchaser'' and the imported textile or apparel product shall be marked in accordance with this chapter.

(3) *Goods sold at retail.* If an article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. For example, where an imported screwdriver is repackaged in the U.S. as part of a tool kit, the ''ultimate purchaser'' is the retail purchaser, not the repackager.

(4) *Gifts or Samples.* If the imported article is distributed as a gift or sample free of charge, the last person who purchases the gift or sample is the ''ultimate purchaser.'' For example, where imported printed material is distributed as part of an unsolicited mailing, the recipient is not the ''ultimate purchaser.''

(5) *Articles purchased by an employer.*If an imported article is purchased by an employer on behalf of an employee, then the employer is the ''ultimate purchaser'' of the article. However, if the employee contributes to the purchase of the imported article, then the employee is considered the ''ultimate purchaser'' of the article. For example, where imported work gloves are sold to industrial supply distributors, who sell them to commercial employers (*e.g.,* meat cutters, hospitals, restaurant food handlers) which distribute the gloves to their employees for use on the premises, the ''ultimate purchaser'' of the imported articles is the commercial employer.

(l) Usual containers—A ''usual container'' means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

3. It is proposed to amend § 134.14 (19 CFR 134.14) by removing paragraph (b); redesignating paragraph (c) as paragraph (b); and adding two examples following paragraph (a) to read as follows:

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser.*

* * * * *

Example 1. A ball point pen of Israeli origin and metal pen holder of Mexican origin are packaged together as a set in the United States. Pursuant to paragraph (a) of this section, the pen must be marked in such a manner as to distinguish the Israeli origin pen from the Mexican component, and it would be appropriate to mark the set ''Pen Made in Israel, Holder Made in Mexico''.

Example 2. Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as ''Label made (or printed) in (name of country)'' or words of similar meaning. See subpart D of this part for marking of bottles, drums, or other containers.

* * * * *

4. It is proposed to redesignate subpart C, ''Marking of Containers or Holders'', consisting of §§ 134.21 through 134.26 as subpart D. It is proposed to redesignate §§ 134.21 and 134.22, respectively, as §§ 134.31 and 134.32, remove §§ 134.23 and 134.24,

and redesignate §§ 134.25 and 134.26, respectively, as §§ 134.33 and 134.34.

5. It is proposed to redesignate subpart D, ''Exceptions to Marking Requirements'', consisting of §§ 134.31 through 134.36, as subpart C. It is proposed to redesignate §§ 134.31 through 134.34, respectively, as §§ 134.21 through 134.24, remove § 134.35, and redesignate § 134.36 as § 134.25.

6. It is proposed to amend redesignated § 134.22 by revising the introductory paragraph to read as follows:

§ 134.22 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are either excepted from or are not subject to the marking requirements (*See* subpart D of this part for marking of containers):

* * * * *

7. It is proposed to amend redesignated § 134.24 by revising the heading and introductory paragraph (a) and adding an example after paragraph (a)(2) to read as follows:

§ 134.24 Repacked unmarked articles and containers.

(a) If imported articles or their outside containers are both not marked with the origin of the articles at the time of importation, but the articles are intended to be repacked into containers marked with the country of origin of the articles, an exception under § 134.22(d) may be authorized in the discretion of the port director under the following conditions:

* * * * *

Example. Unmarked surgical pack wrappers are imported in bulk cartons which are also not marked, but will be repacked by the importer into containers for sale exclusively to hospitals. Since the wrappers at the time of importation are not individually marked to indicate their country of origin or imported in marked containers that will reach the hospitals (ultimate purchasers), as a condition for granting an exception under § 134.22(d) the port director has discretion to require that—the importer mark the repacked wrappers under Customs supervision; or the importer execute a written certification that the repacked wrappers will be properly marked and submit a sample of the remarked wrappers.

* * * * *

8. It is proposed to revise redesignated § 134.32 to read as follows:

§ 134.32 General rules for marking of containers or holders.

(a) *Marking the origin of contents*—(1) *Contents excepted from marking.* Except as provided in paragraph 134.32(b)(1) of this section, whenever an article is excepted from the marking requirements by subpart C of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article.

Example 1. Dog rawhide bones incapable of being marked by means of a sticker, dye, ink, or tag because of their porous, rough, and uneven texture and potential harm to the animal are excepted from individual country of origin marking pursuant to § 134.22(a), but their outermost container or holder in which the bones ordinarily reach the ultimate purchaser shall be marked to indicate the country origin of the bones.

Example 2. Tomatoes imported from Mexico are excepted from the country of origin marking requirements pursuant to § 134.23, as J-List articles. When imported in master containers, these containers must be marked with the origin of the tomatoes. Furthermore, if the tomatoes are repacked into trays for distribution and sale at retail grocery stores, the trays must be marked with the origin of the tomatoes.

Example 3. An ancient Turkish statue is imported into the United States. Pursuant to § 134.22(i) it is excepted from individual country of origin marking requirements. The container in which the statue reaches the ultimate purchaser must be marked to indicate the origin of the statue.

(2) *Contents not excepted from marking.* When an article not excepted from marking is sold in a container or holder that is normally not opened by the ultimate purchaser or the marking on the article is not visible through the container (*e.g.*, individually wrapped soap bars or tennis balls in a vacuum sealed can), the container shall be marked to indicate the country of origin of its contents, regardless of whether the contents are marked.

Example 1. Surgical instruments of foreign origin are each packed inside opaque sealed bags, and are sold exclusively to hospitals. Although the surgical instruments are individually etched with their country of origin pursuant to § 134.43(a), since the ultimate purchasers, i.e., the hospitals cannot view the marking through the opaque bag, the outside container in which the hospitals receive the surgical instruments shall be marked with the origin of the surgical instruments.

Example 2. Small statues or figurines are articles that purchasers typically remove from their box to examine for damage prior to purchase. Accordingly, if figurines of foreign origin are legibly marked with their country of origin in a conspicuous place, their unsealed containers do not have to be marked with the country of origin, provided the containers themselves do not contain any markings that would trigger the application of paragraph (e) of this section 134.32(e).

(b) *Exception for marking the origin of contents*—(1) *Certain excepted articles.* The outermost container or holder in which the article ordinarily reaches the ultimate purchaser is not required to be marked if:

(i) It is a container or holder of an article excepted from marking pursuant to § 134.22(f), (g), or (h); or

(ii) It is a container of a good of a NAFTA country which is excepted from marking pursuant to § 134.22(e), (f), (g), (h), (i), (p), or (q).

Example. A major department store imports holiday decorations such as artificial trees, garlands, and wreaths of French-origin, and ornaments of German-origin only for use in the decoration of their stores and not for resale. Provided local port officials are satisfied that the ultimate purchaser, *i.e.*, the department store, is aware of the origins of the decorations and that the decorations will not be resold in the United States, both the decorations and their cartons in which the decorations are packed are excepted from marking pursuant to § 134.22(f).

(c) *Marking of the origin of usual containers*—(1) *Usual Container used as such at the time of importation.* A usual container, as defined in § 134.1(l) which is in use at the time of importation is not required to be marked with its own country of origin regardless whether it is reusable or not.

Example. Sunglasses of foreign origin are each packed and imported inside eyeglass cases of foreign origin. The sunglasses are marked as to their origin by means of an adhesive sticker on the lenses. As the eyeglass cases are considered usual containers and are used as such at the time of importation, they are not required to be marked with their own country of origin provided local Customs officials at the port of entry are satisfied that the eyeglass cases will reach the ultimate purchaser with the sunglasses packed therein.

(2) *Usual container not used as such at the time of importation.* (i) Except for a good of a NAFTA country, a usual container, as defined in § 134.1(l), which is not used as such at the time of importation shall be marked to indicate clearly the country of its own origin, unless the container itself is excepted from marking under subpart C of this part. A good of a NAFTA country which is a usual container is not required to be individually marked with its own origin whether or not in use as a usual container at the time of importation.

Example. Wooden crates of Mexican and Guatemalan origin are imported into the United States by the truckload and stacked upon each other. Once they are imported, they are sold to farmers who use them to transport their Florida tomatoes to market. As the wooden crates may be considered the usual containers of tomatoes, but are not used as such at the time of importation, the crates of Guatemalan origin each must be marked to clearly indicate that they are of Guatemalan origin, such as ''Crate Made in Guatemala''. However, since goods of a

NAFTA country that are usual containers are not required to be marked, the crates of Mexican origin that are imported by the truckload will not be required to be marked, provided Customs officials at the port of entry are satisfied that the Mexican crates will be used as usual containers after importation.

(ii) Regardless of the origin, if usual containers not in use as such at the time of entry are packed and imported in multiple units (dozens, gross, *etc.*), only the outermost container in which the usual containers reach the ultimate purchaser in the U.S. needs to be marked.

Example. Unmarked petri dishes of Canadian origin are imported inside large cartons and sold to Biologics Company in the United States. Biologics who fills the petri dishes with microorganisms for sale to various customers in the science community, is the ultimate purchaser of the dishes. Since the petri dishes are the usual containers of microorganisms, but are not used as such at the time of importation, the large carton (outer container) in which the petri dishes are packed and imported must be marked to indicate their Canadian origin.

(iii) If a usual container is marked with its own country of origin at the time of importation and the marking will be visible after it is filled, the marking shall clearly indicate that the named country pertains to the container only and not the contents. For example, if bottles, drums, or other containers imported empty, to be filled in the United States, are individually marked with their own origin, they shall be marked with such words as ''Bottle (or container) made in (name of country)''.

(d) *Container or holder other than usual containers.* Regardless of origin, a container or holder considered as an imported article under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and not considered a ''usual container'' as defined in § 134.1(l), shall be marked to clearly indicate the country of its own origin in addition to any marking which may be required to show the country of origin of its contents, except when such container or holder itself is excepted from marking under subpart C of this part.

Example 1. Suntan lotion of French origin is imported inside a plastic bracelet of Pakistani origin. Since the bracelet is not a container in which suntan lotion ordinarily reaches the ultimate purchaser, the bracelet is not considered a usual container and must be marked with its own country of origin, along with the origin of the suntan lotion if the origins are not the same. An appropriate marking would be ''Suntan lotion Made in France, Bracelet Made in Pakistan''.

Example 2. Necklaces of Italian origin illegibly stamped ''Italy'' are imported into the United States for retail sale. At the time of importation, each necklace is packed in a jewelry box of Taiwanese origin constructed of a hard-shell plastic covered by a gray velvet type material. The boxes open and close with the aid of a hinge, and the inside of the boxes is covered with a satin material. As the jewelry boxes are not usual containers, they must be marked to clearly indicate their own origin, along with the origin of the necklaces since the necklaces themselves are not legibly marked. A marking such as ''Box Made in Taiwan; Necklace Made in Italy'' would be acceptable.

(e) *Marking of containers of imported articles when a name of country or locality other than the country of origin of its contents appears on a container or holder.* In any case in which the words ''United States'', or ''American'', the letters ''U.S.A.'', any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the contents were manufactured or produced appear on the container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the contents, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by ''Made in'', ''Product of'', or other words of similar meaning.

Example. The Canadian company ''Courrege'' distributes bracelets of French origin. The bracelets will be sold in jewelry boxes containing the words ''Distributed by Courrege, Ottawa'', and the bracelets are legibly stamped ''Made in France''. As the words ''Distributed by Courrege, Ottawa'' may mislead the ultimate purchaser that Canada is the country of origin, the boxes must be labeled ''Made in France'' or similar words on the same side as the words ''Distributed by Courrege, Ottawa'' and in at least a comparable size.

9. It is proposed to amend redesignated § 134.33 as follows:

a. Revise the heading;

b. Remove in paragraph (a) the words at the beginning of the first sentence ''If an article subject to these requirements is intended to be repacked in new containers'' and add in their place the words ''With the exception of articles whose containers are not required to be marked under § 134.32(b) of this part, if an article listed under § 134.23 or otherwise excepted from the marking requirements under § 134.22 is intended to be repacked in new containers''

c. Redesignate current paragraphs (b) through (e), respectively as new paragraphs (c) through (f);

d. Add a new paragraph (b); and

e. Add three examples following redesignated paragraph (f).

The revisions and additions read as follows:

§ 134.33 Containers or holders for repacked J-list articles and other articles excepted from marking.

* * * * *

(b) *Repacker.* A ''repacker'' means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

* * * * *

(f) *Duties and penalties.*

* * * * *

Example 1. The importer enters bulk packed articles from China which are incapable of being marked. The articles are not processed in any way while in the importer's possession but are sold to a person in the U.S. who will repackage the articles into individual containers without further processing for sale to retail purchasers. The importer does not notify the repacker of the marking requirements and provide the port director with a certification pursuant to this section. The articles are excepted from marking under § 134.22(a) of this part. Since the containers of the articles are not excepted from marking under § 134.32(b), and the transferee is considered a repacker under paragraph (b) of this section, the importer's failure to comply with the certification requirements may subject him to duties and penalties as provided under paragraph (e) of this section. The importer would also be obligated to comply with the certification requirements under similar facts if the articles were on the ''J-list'' (§ 134.23).

Example 2. The importer enters an article from Mexico which was produced more than 20 years ago, and in its original packaging resells it to a person in the U.S. who repacks it for sale to an ultimate purchaser. Under § 134.22(i), the article is excepted from the marking requirements. In addition, since the article is a good of a NAFTA country, the container is also excepted from the marking requirements pursuant to § 134.32(b). Therefore, the certification requirements of this section are not applicable.

Example 3. The importer enters an article from China which is on the J-list. The container housing the article is properly marked with China as the country of origin. The importer sells the article in its original packaging to a customer in the U.S. who processes it and then repacks it for sale to a third party. The third party in turn processes the article and repacks it for sale to a retail customer who consumes the article. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). Although the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements, the immediate customer repacks the article in

properly marked containers. However, the third party processor fails to mark the new container after processing and repacking the article, as required under 19 U.S.C. 1304. In this example, the article is excepted from individual marking but each new container in which the article is repacked is required to be marked with the country of origin, until the article reaches the ultimate purchaser, in this case, the retail customer. As a result of the importer's failure to comply with the certification requirements of this section the importer may be subject to the assessment of marking duties and penalties as provided under paragraph (e) of this section.

10. It is proposed to amend redesignated § 134.34 as follows:

a. Revise the heading;

b. Redesignate current paragraphs (b), (c), (d), (e) and (f), respectively, as new paragraphs (c), (d), (e), (f) and (g);

c. Add a new paragraph (b); and

d. Add an example after redesignated paragraph (f).

The revisions and additions will read as follows:

§ 134.34 Repacked marked articles.

* * * * *

(b) *Repacker.* A ''repacker'' means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but, as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

* * * * *

(f) *Duties and penalties.*

* * * * *

Example. The importer enters articles from China which are individually marked with their country of origin. He sells the articles in their bulk packaging to a customer in the U.S. who processes the articles and also repacks them in bulk for sale to a third party. The third party repacks them into blister packs for sale to retail customers. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). However, the blister packages obscure the country of origin marking on the article. Although it is clear that the articles will be repackaged for retail sale, the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements. In this example, having reasonable knowledge of the subsequent repacking of the articles into retail containers after release from Customs custody imposes an obligation upon the importer to notify its U.S. customer of the marking requirements and to provide the required certification to the port director. Since the importer has failed to comply with the certification requirements of this provision, and the retail packages obscure country of origin marking, the importer may be subject to duties and penalties as provided under paragraph (f) of this section.

* * * * *

§ 134.47 [Removed]

11. It is proposed that § 134.47 (19 CFR 134.47) be removed.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 19, 2000.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–1682 Filed 1–25–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105089–99]

RIN 1545–AX38

Guidance Under Section 356 Relating to the Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance relating to nonqualified preferred stock. The proposed regulations address the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain reorganizations and distributions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for 10 a.m., May 31, 2000, must be received by May 10, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105089–99), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105089–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard E. Coss, (202) 622–7790; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 354, 355, 356, and 1036 of the Internal Revenue Code (the Code). Section 1014 of the Taxpayer Relief Act of 1997 (TRA of 1997), Public Law 105–34, enacted on August 5, 1997, amended sections 351, 354, 355, 356, and 1036 of the Code. As amended, these sections, in general, provide that nonqualified preferred stock (as defined in section 351(g)(2)) (NQPS) received in an exchange or distribution will not be treated as stock or securities but, instead, will be treated as ''other property'' or ''boot.'' As a result, the receipt of NQPS in a transaction occurring after the NQPS provisions are effective will, unless a specified exception applies, result in gain (or, in some instances, loss) recognition. Section 351(g)(4) provides authority to issue regulations to carry out the purposes of these provisions.

Section 351(g)(2)(A) defines NQPS as preferred stock if (1) the holder has the right to require the issuer or a related person to redeem or purchase the stock, (2) the issuer or a related person is required to redeem or purchase the stock, (3) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or (4) the dividend rate on the stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. Factors (1), (2), and (3) above will cause an instrument to be NQPS only if the right or obligation may be exercised within 20 years of the date the instrument is issued and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

These rights or obligations do not cause preferred stock to be NQPS in certain circumstances described in section 351(g)(2)(C). In one such

exception, contained in section 351(g)(2)(C)(i)(II), a redemption or purchase right shall not cause stock to be NQPS if the stock containing the right is transferred in connection with the performance of services for the issuer or a related person (and represents reasonable compensation), and the right may be exercised only upon the holder's separation from service.

The NQPS provisions also provide certain exceptions to the treatment of NQPS as boot. Under sections 354(a)(2)(C), 355(a)(3)(D), and 356(e)(2), NQPS is treated as stock, and not other property, in cases where the NQPS is received in exchange for, or in a distribution with respect to, NQPS. As a result, the receipt of NQPS in exchange for NQPS will not result in gain or loss recognition.

Under prior law, preferred stock generally did not constitute boot in a reorganization or in a distribution under section 355 of the Code. The legislative history of the NQPS provisions indicates that Congress was concerned about nonrecognition transactions in which a secure preferred stock instrument is received in exchange for common stock or riskier preferred stock. The committee reports state that ''[c]ertain preferred stocks have been widely used in corporate transactions to afford taxpayers non-recognition treatment, even though the taxpayers may receive relatively secure instruments in exchange for relatively risky investments,'' and that ''[t]he Committee believes that when such preferred stock instruments are received in certain transactions, it is appropriate to view such instruments as taxable consideration, since the investor has often obtained a more secure form of investment.'' H.R. Rep. No. 148, 105th Cong., 1st Sess. 472 (1997); S. Rep. 33, 105th Cong., 1st Sess. (1997).

The NQPS provisions apply to transactions after June 8, 1997, but will not apply to any transaction (1) made pursuant to a written agreement which was binding on such date and at all times thereafter, (2) described in a ruling request submitted to the IRS on or before such date, or (3) described in a public announcement or filing with the Securities and Exchange Commission on or before such date. Section 1014(f) of TRA of 1997.

A temporary regulation published as T.D. 8753 in the **Federal Register** on January 6, 1998, provides that, notwithstanding contemporaneously issued final regulations treating certain rights to acquire stock as securities that can be received tax-free in reorganizations and section 355 distributions, a right to acquire NQPS received in exchange for stock other than NQPS (or for a right to acquire stock other than NQPS) will not be treated as a security, and that NQPS received in exchange for stock other than NQPS (or for a right to acquire stock other than NQPS) will not be treated as stock or a security. The temporary regulation added § 1.356–6T, and applies to NQPS (or a right to acquire such stock) received in connection with a transaction occurring on or after March 9, 1998 (other than transactions described in section 1014(f)(2) of TRA of 1997).

Explanation of Provisions

The proposed regulations address three technical issues relating to the question of whether certain preferred stock instruments qualify as NQPS.

The first issue addressed by the proposed regulations is whether stock described in section 351(g)(2) that was issued in a transaction on or before June 8, 1997, qualifies as NQPS (even though the receipt of such stock would not have been boot because the transaction in which it was received occurred prior to the NQPS provisions' effective date). Although the NQPS provisions generally are effective with respect to transactions occurring after June 8, 1997, neither the effective date provisions of section 1014(f) of TRA of 1997 nor the legislative history of the NQPS provisions addresses this issue.

The proposed regulations provide that stock described in section 351(g)(2) is NQPS regardless of the date on which the stock is issued. The IRS and Treasury believe that this represents the proper interpretation of the NQPS provisions; a contrary interpretation would give rise to results that are inconsistent with other NQPS provisions and their underlying policy.

For example, assume that corporation (T) issues preferred stock described in section 351(g)(2) to shareholder (X) in 1996, and that X surrenders the T stock and receives NQPS of acquiring corporation (P) in a reorganization occurring after June 8, 1997 (when the NQPS provisions are effective). If the T preferred stock received in 1996 is not NQPS, X will recognize gain (if any) on the exchange. This result is unwarranted, because X is not receiving a more secure type of investment for a relatively risky type of investment, and exchanges of NQPS for NQPS are otherwise governed by the nonrecognition rules of sections 354, 355, and 356.

The second issue addressed by the proposed regulations is the treatment of NQPS received in a reorganization in exchange for (or in a distribution with respect to) preferred stock that is not NQPS solely because, at the time the original stock was issued, a redemption or purchase right was not exercisable until after a 20-year period beginning on the issue date, or a redemption or purchase right was exercisable within a 20-year period but was subject to a contingency which made remote the likelihood of the redemption or purchase, or, in the case of an issuer's right to redeem or purchase stock described in section 351(g)(2)(A)(iii), was unlikely to be exercised within a 20-year period beginning on the issue date (or because of any combination of these reasons). To illustrate, assume that after June 8, 1997, T issues preferred stock to X that permits the holder to require T to redeem the stock on demand, but not before the stock is held for 22 years. Assume that seven years later, the T stock is exchanged in a reorganization for P preferred stock with substantially identical terms that permits the holder to require P to redeem the stock after 15 years.

Technically, this transaction could be viewed as a taxable exchange because X is receiving P stock that meets the definition of NQPS in exchange for T stock that is not NQPS (QPS). However, the IRS and Treasury believe that nonrecognition treatment is appropriate because the P stock represents a continuation of the original investment in the T stock.

The proposed regulations provide a rule that treats the P stock received in such transactions as QPS if the P stock is substantially identical to the T preferred stock surrendered (or the T stock on which a distribution is made). The substantially identical requirement is necessary to ensure that this rule does not permit the NQPS provisions to be circumvented through exchanges of QPS for more secure NQPS. The P stock is considered to be substantially identical to the T stock if two conditions are met. The first condition is that the P stock does not contain any terms which, in relation to the terms of the T stock, decrease the period in which a redemption or purchase right will be exercised, increase the likelihood that such a right will be exercised, or accelerate the timing of the returns from the stock instrument (including the receipt of dividends or other distributions). The second condition is that, as a result of the receipt of P stock in the transaction, the exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the T stock. To illustrate the two conditions, if the P stock contains a

term that permits the stock to be redeemed before the date on which the T stock could be redeemed, or if, at the time of the transaction, the T stock is not more likely than not to be redeemed within a 20-year period beginning on the issue date of the T stock but the P stock is more likely than not to be redeemed within a 20-year period beginning on the issue date of the T stock, the P stock is not substantially identical to the T stock.

Under this rule, the P stock received will continue to be treated as QPS in subsequent transactions, and similar principles will apply to those transactions. For example, if the P stock is later exchanged in a reorganization for substantially identical stock of another acquiring corporation, the acquiring corporation stock will also be treated as QPS. However, if the P stock is later exchanged for stock described in section 351(g)(2) that is not substantially identical, the receipt of the stock will be treated as boot.

The third issue addressed by the proposed regulations is how to interpret the provision that exempts from the definition of NQPS certain preferred stock containing a purchase or redemption right that may only be exercised on the holder's separation from service (compensation stock). To be exempted from the definition of NQPS under this provision, stock must be ''transferred in connection with the performance of services'' and must represent ''reasonable compensation.'' A commentator has questioned how these requirements apply in the context of a reorganization or distribution. The concern is that, when an employee of T receives P preferred stock in a reorganization in exchange for T stock of equal value, the P stock received could be considered transferred in exchange for stock (rather than for services), or could be considered not to represent reasonable compensation (because the P stock received in the equal value exchange represents no additional compensation to the employee). The legislative history of the NQPS provisions does not address these ambiguities.

The IRS and Treasury believe that the exemption for compensation stock is intended to apply in situations where an employee previously received compensation stock and then surrenders that stock in a reorganization in exchange for new compensation stock containing a similar purchase or redemption right that can only be exercised upon separation from service. The proposed regulations provide a rule that treats the P preferred stock received in such transactions as satisfying the ''transferred in connection with the performance of services'' and the ''reasonable compensation'' requirements if the T stock surrendered (or the T stock on which a distribution is made) was originally transferred to the T employee in connection with the performance of services and represented reasonable compensation at the time of the transfer. This rule applies regardless of whether the T stock is common or preferred stock. No inference is intended regarding the meaning of the phrases ''transferred in connection with the performance of services'' and ''reasonable compensation'' for purposes other than the exemption from the definition of NQPS in section 351(g)(2)(C)(i)(II).

The proposed regulations also provide that the principles of the rules described above apply to transactions involving rights to acquire NQPS that are subject to § 1.356–6T.

Proposed Effective Date

The proposed regulations are proposed to be effective for transactions on the date that final regulations are published in the **Federal Register**. Notwithstanding the prospective effective date of the proposed regulations, the IRS and Treasury believe that the regulations prescribe the proper treatment of the transactions they address, and the IRS generally will not challenge return positions consistent with the regulations. However, a transaction involving rights to acquire NQPS that occurs before the effective date of § 1.356–6T will be treated in accordance with the law governing rights to acquire stock in effect at that time.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies, if written) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how the regulations may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 31, 2000, beginning at 10 a.m., in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the hearing access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 10, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Richard E. Coss, Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the

following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.354–1 also issued under 26 U.S.C. 351(g)(4).

Section 1.355–1 also issued under 26 U.S.C. 351(g)(4). * * *

Section 1.356–7 also issued under 26 U.S.C. 351(g)(4). * * *

Section 1.1036–1 also issued under 26 U.S.C. 351(g)(4). * * *

Par. 2. Section 1.354–1 is amended by adding paragraph (f) as follows:

§ 1.354–1 Exchanges of stock and securities in certain reorganizations.

* * * * *

(f) *Nonqualified preferred stock.* See § 1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See § 1.356–7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 3. Section 1.355–1 is amended by adding paragraph (d) as follows:

§ 1.355–1 Distributions of stock and securities of a controlled corporation.

* * * * *

(d) *Nonqualified preferred stock.* See § 1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See § 1.356–7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 4. Section 1.356–7 is added to read as follows:

§ 1.356–7 Rules for treatment of nonqualified preferred stock and other preferred stock received in certain transactions.

(a) *Stock issued prior to effective date.* Stock described in section 351(g)(2) is nonqualified preferred stock (NQPS) regardless of the date on which the stock is issued. However, sections 351(g), 354(a)(2)(C), 355(a)(3)(D), 356(e), and 1036(b) do not apply to any transaction occurring prior to June 9, 1997, or to any transaction occurring after June 8, 1997, that is described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, 921.

(b) *Receipt of preferred stock in exchange for (or distribution on) substantially identical preferred stock* (1) *General rule.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock is not NQPS, even though it is described in section 351(g)(2), if it is received in exchange for (or in a distribution with respect to) preferred stock (the original preferred stock) that is not NQPS (QPS), provided—

(i) The original preferred stock is QPS solely because, on its issue date, a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) was not exercisable until after a 20-year period beginning on the issue date, the right or obligation was exercisable within the 20-year period beginning on the issue date but was subject to a contingency which made remote the likelihood of the redemption or purchase, or the issuer's (or a related party's) right to redeem or purchase the stock was not more likely than not to be exercised within a 20-year period beginning on the issue date, or because of any combination of these reasons; and

(ii) the stock received is substantially identical to the original preferred stock.

(2) *Substantially identical.* The stock received is substantially identical to the original preferred stock if—

(i) the stock received does not contain any term or terms which, in relation to any term or terms of the original preferred stock, decrease the period in which a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) may be exercised, increase the likelihood that such a right or obligation may be exercised, or accelerate the timing of the returns from the stock instrument, including the timing of actual or deemed dividends or other distributions received on the stock; and

(B) as a result of the exchange or distribution, exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the original preferred stock.

(3) *Treatment of stock received.* The stock received will continue to be treated as QPS in subsequent transactions involving such stock, and the principles of this paragraph (b) apply to such transactions as though the stock received is the original preferred stock issued on the same date as the original preferred stock.

(c) *Stock transferred for services.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock containing a right or obligation described in clause (i), (ii) or (iii) of section 351(g)(2)(A) that is exercisable only upon the holder's separation from service from the issuer or a related person (as described in section 351(g)(3)(B)) will be treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II), if such preferred stock is received in exchange for (or in a distribution with respect to) existing stock containing a similar right or obligation (exercisable only upon separation from service) and the existing stock was transferred in connection with the performance of services for the issuer or a related person (and represented reasonable compensation when transferred). In applying the rules relating to NQPS, the preferred stock received will continue to be treated as transferred in connection with the performance of services (and representing reasonable compensation) in subsequent transactions involving such stock, and the principles of this paragraph (c) apply to such transactions.

(d) *Rights to acquire stock.* For purposes of § 1.356–6T, the principles of paragraphs (a), (b), and (c) of this section apply.

(e) *Examples.* The following examples illustrate paragraphs (a), (b), and (c) of this section. For purposes of the examples in this paragraph (e), T and P are corporations, A is a shareholder of T, and, except for in *Example 1,* A surrenders and receives (in addition to the stock exchanged in the examples) common stock in the reorganizations described.

Example 1. In 1995, A transfers property to T and receives T preferred stock that is described in section 351(g)(2) in a transaction under section 351. In 2002, pursuant to a reorganization under section 368(a)(1)(B), A surrenders the T preferred stock in exchange for P NQPS. Under paragraph (a) of this section, the T preferred stock issued to A in 1995 is NQPS. However, because section 351(g) does not apply to transactions occurring before June 9, 1997, the T NQPS was not ''other property'' within the meaning of section 351(b) when issued in 1995. Under sections 354(a)(2)(C) and 356(e)(2), the P NQPS received by A in 2002 is not ''other property'' within the meaning of section 356(a)(1)(B) because it is received in exchange for NQPS.

Example 2. T issues QPS to A on January 1, 2000 that is not NQPS solely because the holder cannot require T to redeem the stock until January 1, 2022. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock, including the term that the holder cannot require the redemption of the stock until January 1, 2022. Because the P stock and the T stock have identical terms, and because the redemption did not become more likely than

not to occur within the 20-year period that begins on January 1, 2000 (which is the issue date of the T preferred stock) as a result of the exchange, under paragraph (b) of this section, the P preferred stock received by A is treated as QPS. Thus, the P preferred stock received is not ''other property'' within the meaning of section 356(a)(1)(B).

Example 3. The facts are the same as in Example 2, except that, in addition, in 2010, pursuant to a recapitalization of P under section 368(a)(1)(E), A exchanges the P preferred stock above for P NQPS that permits the holder to require P to redeem the stock in 2020. Under paragraph (b) of this section, the P preferred stock surrendered by A is treated as QPS. Because the P preferred stock received by A in the recapitalization is not substantially identical to the P preferred stock surrendered, the P preferred stock received by A is not treated as QPS. Thus, the P preferred stock received is ''other property'' within the meaning of section 356(a)(1)(B).

Example 4. T issues preferred stock to A on January 1, 2000 that permits the holder to require T to redeem the stock on January 1, 2018, or at any time thereafter, but which is not NQPS solely because, as of the issue date, the holder's right to redeem is subject to a contingency which makes remote the likelihood of redemption on or before January 1, 2020. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock. Immediately before the exchange, the contingency to which the holder's right to cause redemption of the T stock is subject makes remote the likelihood of redemption before January 1, 2020, but the P stock, although subject to the same contingency, is more likely than not to be redeemed before January 1, 2020. Because, as a result of the exchange of T stock for P stock, the exercise of the redemption right became more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock, the P preferred stock received by A is not substantially identical to the T stock surrendered, and is not treated as QPS. Thus, the P preferred stock received is ''other property'' within the meaning of section 356(a)(1)(B).

Example 5. The facts are the same as in *Example 4,* except that, immediately before the merger of T into P in 2007, the contingency to which the holder's right to cause redemption of the T stock is subject makes it more likely than not that the T stock will be redeemed before January 1, 2020. Because exercise of the redemption right did not become more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock as a result of the exchange, the P preferred stock received by A is substantially identical to the T stock surrendered, and is treated as QPS. Thus, the P preferred stock received is not ''other property'' within the meaning of section 356(a)(1)(B).

Example 6. A is an employee of T. In connection with A's performance of services for T, T transfers to A in 2000 an amount of T common stock that represents reasonable compensation. The T common stock contains a term granting A the right to require T to redeem the common stock, but only upon A's separation from service from T. In 2005, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A receives, in exchange for A's T common stock, P preferred stock granting a similar redemption right upon A's separation from P's service. Under paragraph (c) of this section, the P preferred stock received by A is treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II). Thus, the P preferred stock received by A is QPS.

(f) *Effective dates.* This section applies to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.1036–1 is amended by adding paragraph (d) as follows:

§ 1.1036–1 Stock for stock of the same corporation.

* * * * *

(d) *Nonqualified preferred stock.* See § 1.356–7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788,921.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1529 Filed 1–21–00 11:59 am]

BILLING CODE 4380–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 87–1b; FRL–6527–9]

Approval of Post-1996 Rate of Progress Plan: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve Indiana's Post-1996 Rate of Progress Plan for Lake and Porter Counties, Indiana, submitted on December 17, 1997, and January 22, 1998. The Plan identifies volatile organic compound control measures and documents projections that those measures provide 3% per year (9% total) emission reductions in Lake and Porter Counties between 1996 and 1999. Our approval means that EPA finds the State Plan meets Clean Air Act (Act) requirements. 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 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 proposed rule. 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 must be received on or before February 25, 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: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4366.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: January 6, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–1559 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0210; FRL–6529–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District and Sacramento Metropolitan Air Quality Management District portions of the California State Implementation Plan (SIP). These revisions concern the control of volatile organic compound (VOC) emissions from gasoline transfer into stationary storage container, delivery vessels and bulk plants, and from organic chemical manufacturing operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 25, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP include: San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants; and Sacramento Metropolitan Air Quality Management District's (SMAQMD) Rule 464, Organic Chemical Manufacturing Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 21, 1998 and May 13, 1999 respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Joaquin Valley Area and the Sacramento Metropolitan Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Joaquin Valley Area is classified as serious; the Sacramento Metropolitan Area is classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on August 29, 1998 and May 13, 1999, including the rules being acted on in this document. This document addresses EPA's proposed action for SJVUAPCD Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants, and SMAQMD Rule 464, Organic Chemical Manufacturing Operations. SJVUAPCD adopted Rule 4621 on June 18, 1998 and SMAQMD adopted Rule 464 on July 23, 1998. These submitted rules were found to be complete on October 2, 1998 (Rule 4621) and June 10, 1999 (Rule 464) pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V [3] and are being proposed for approval into the SIP.

SJVUAPCD's Rule 4621 controls VOC emissions from gasoline transfer into stationary storage containers, delivery vessels, and bulk plants; and SMAQMD's Rule 464 controls VOC emissions from organic chemical manufacturing operations. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] San Joaquin Valley Area retained its designation of nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTGs applicable to Rule 4621 are entitled, ''Control of Hydrocarbons from Tank Gasoline Terminals,'' EPA–450/2–77–026 and ''Control of Volatile Organic Emissions from Bulk Gasoline Plants,'' EPA–450/2–77–035. There is no single CTG document applicable to Rule 464. However, the following CTG documents were used as guidance in evaluating the rule: ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry,'' EPA–450/4–91–031, ''Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Manufacturing Industry,'' EPA–450/2–78–029, and draft CTG entitled ''Control of Volatile Organic Compound Emissions from Industrial Wastewater,'' EPA–453/D–930056. Other guidance documents used in evaluating Rule 464 are: ''Control of Volatile Organic Compound Emissions from Batch Processes—Alternative Control Techniques Information Document,'', 40 CFR Part 60, subparts VV, NNN, RRR, and 40 CFR Part 63, subparts F and G. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On May 2, 1996, EPA approved into the SIP a version of SJVUAPCD Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants that had been adopted by SJVUAPCD on May 20, 1993. Revisions to this rule were subsequently adopted on June 18, 1998 and submitted to EPA on August 21, 1999. SJVUAPCD's submitted Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants includes the following significant changes from the current SIP:

- Addition of applicability threshold to tank capacity (i.e, 250–19,800 gallons) from Section 5, Requirements, of the SIP approved version of the rule for clarity;
- Addition of requirements for inspection, frequency of inspection and repair response period;
- Addition of leak-free requirements for loading racks, aboveground tanks, and vapor collection equipment.
- Addition of new recordkeeping requirements;
- Addition of new provisions, new definitions and revisions of some, and other minor changes to improve enforceability and clarity; and
- Deletion of extraneous provisions and obsolete requirements in the rule.

There is currently no version of SMAQMD Rule 464, Organic Chemical Manufacturing Operations in the SIP. The submitted is divided into five sections consisting of the following:

- General provisions which include applicability and exemptions;
- Definitions pertinent to the rule;
- Standards for various process equipment including: reactors, distillation columns, crystallisers, evaporators, dryers, process tanks, wastewater, storage tanks, and liquid transfer;
- Administrative requirements; and
- Monitoring, recordkeeping, and test methods.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants, and SMAQMD's Rule 464, Organic Chemical Manufacturing Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Executive Order 13132, Federalism, (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 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 proposed 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 (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 E.O. 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 E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 E.O. 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: January 14, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–1839 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–043–1–9905b; and GA–045–1–9906b; FRL–6528–8]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revision to Enhanced Inspection and Maintenance Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted, in two separate packages, by the State of Georgia in November and December of 1998. Both submittals request revisions to the enhanced Inspection and Maintenance (I/M) program, in accordance with the requirements of Section 110 of the Clean Air Act as amended in 1990 (CAA) and section 348 of the National Highway Systems Designation Act (NHSDA). In total, these submittals request revisions to modify the following sections: ''Emission Inspection Procedures,'' ''Inspection Station Requirements,'' ''Certificate of Emissions Inspection,'' ''Definitions,'' ''Waivers,'' ''Inspection Fees,'' and the ''Accelerated Simulated Mode (ASM) Start-up Standards'' found in Appendix H of the Enhanced I/M Test Equipment, Procedures, and Specifications—Phase II. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals 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. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 25, 2000.

ADDRESSES: All comments should be addressed to: Dale Aspy (November 1998 submittal) or Lynorae Benjamin (December 1998 submittal) at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Dale Aspy, 404/562–9041; Lynorae Benjamin, 404/562–9040.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. 404/363–7000.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at 404/562–9041 or Lynorae Benjamin at 404/562–9040.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: January 5, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–1835 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–360; FCC 99–390]

Public Interest Obligations of Television Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document solicits comments on how broadcasters can best serve the public interest as they transition to digital transmission technology. The document is guided by several proposals the Commission has received and other recommendations that have been made in recent years.

DATES: Comments are due on or before March 27, 2000; reply comments are due on or before April 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy and Rules Division, Mass Media Bureau (202) 418–2130, TTY (202) 418–1169.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry (''*NOI*''), FCC 99–390, adopted December 15, 1999; released December 20, 1999. The full text of the Commission's *NOI* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC. The complete text of this *NOI* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Synopsis of Notice of Inquiry

I. Introduction

1. Television is the primary source of news and information to Americans, and provides hours of entertainment every week. In particular, children spend far more time watching television that they spend with any other type of media. Those who broadcast television programming thus have a significant impact on society. Given the impact of their programming and their use of the public airwaves, broadcasters have a special role in serving the public. For over seventy years, broadcasters have been required by statute to serve the ''public interest, convenience, and necessity.'' Congress has charged the Federal Communications Commission with the responsibility of implementing and enforcing this public interest requirement. Indeed, this is the ''touchstone'' of the Commission's statutory duty in licensing the public airwaves. Under the Communications Act of 1934, the Commission may issue, renew, or approve the transfer of a broadcast license only upon first finding that doing so will serve the public interest.

2. There has been considerable debate over the years about how the Commission should carry out this statutory mandate. Currently, broadcasters must comply with a number of affirmative public interest programming and service obligations. For example, broadcast licensees must provide coverage of issues facing their communities and place lists of programming used in providing significant treatment of such issues in their public inspection files. Broadcasters must also comply with statutory political broadcasting requirements regarding equal opportunities, charges for political advertising, and reasonable access for federal candidates. In addition, television broadcasters must provide children's educational and informational programming under the Children's Television Act of 1990. In terms of programming obligations, broadcasters are also prohibited from airing programming that is obscene, and restricted from airing programming that is ''indecent'' during certain times of the day. Similarly, broadcasters also have obligations regarding closed captioning, equal employment opportunity, sponsorship identification, and advertisements during children's programming.

3. The discussion of television broadcasters' public interest obligations has been renewed by their transition from analog to digital television (DTV) technology. This is due in part to the new opportunities DTV provides. DTV holds the promise of reinventing free, over-the-air television by offering broadcasters new and valuable business opportunities and providing consumers new and valuable services. DTV broadcasters will have the technical capability and regulatory flexibility to air high definition TV (HDTV) programming with state-of-the-art picture clarity; to ''multicast'' by simultaneously providing multiple channels of standard digital programming and/or HDTV programming; and to ''datacast'' by providing data such as stock quotes, or interactive TV via the DTV bitstream.

4. In establishing the statutory framework for the transition to DTV, Congress directed the Commission to grant any new DTV licenses to all existing television broadcasters. Congress stated in section 336 of the Communications Act that ''[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.'' Likewise, in implementing section 336 in the 5th Report and Order in the DTV proceeding (62 FR 26966, May 16, 1997), the Commission reaffirmed that digital TV broadcasters remain public trustees and must serve the public interest, and that existing public interest obligations continue to apply to all broadcast licensees.

5. The Commission also indicated, however, that ''[b]roadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television.'' Commenters in the DTV proceeding adopted different views on this issue, with some arguing that broadcasters' public interest obligations in the digital world ''should be clearly defined and commensurate with the new opportunities provided by the digital channels broadcasters are receiving,'' while others contended that ''current public interest rules need not change simply because broadcasters will be using digital technology to provide the same broadcast service to the public.'' The Commission declined to resolve the

issue in the DTV proceeding, instead choosing to issue a notice to consider all views at a later point.

6. We undertake that task with this *NOI*. In doing so, we are guided by several proposals and recommendations made in recent years. Among the most significant of these are the recommendations of the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (''Advisory Committee''). The Advisory Committee was comprised of a broad cross-section of interests, consisting of twenty-two members chosen by the President from ''the commercial and noncommercial broadcasting industry, computer industries, producers, academic institutions, public interest organizations, and the advertising community.'' On December 18, 1998, the Advisory Committee submitted a report, which contains ten separate recommendations on the public interest obligations digital television broadcasters should assume. On October 20, 1999, Vice President Gore submitted a letter to Chairman Kennard asking the Commission to focus on several of the Advisory Committee's recommendations in particular.

7. In addition to the Advisory Committee's recommendations, on June 3, 1999, People for Better TV filed a petition for rulemaking and a petition for notice of inquiry. People for Better TV also includes a number of diverse groups. People for Better TV argues that the Telecommunications Act of 1996 requires the Commission to determine the public interest obligations of DTV broadcasters, that the advent of DTV requires the Commission to consider public interest obligations anew, and to clarify whether existing guidelines apply, and that both broadcasters and the public need a basic set of public interest standards. The group contends that the Commission should initiate a rulemaking proceeding to determine the public interest obligations of digital broadcasters. People for Better TV also urged the Commission to issue a notice of inquiry and hold hearings on the public interest obligations of digital television licensees, focusing on a variety of categories. On November 16, 1999 People for Better TV submitted a letter to Chairman Kennard reiterating its request that the Commission initiate a proceeding to determine the public interest obligations of DTV broadcasters.

8. We are also guided by the thoughts and work of other advocates regarding broadcasters' public interest obligations, including those proposals that are not as closely tied to the new opportunities inherent in digital technology. The conversion from analog to digital is a long transition, and both analog and digital broadcasters must operate consistently in the public interest during the transition. At the same time, we acknowledge that many broadcasters have served the public interest in numerous ways over the years. According to a report of the National Association of Broadcasters published in 1998, the nation's broadcasters provided $6.85 billion in community service in 1996. Therefore, by this *NOI*, we are asking broadcasters and members of the public to present their views or ideas on how best to implement the public interest standard during the transition. As the courts have acknowledged, and the transition to DTV reinforces, the public interest standard is ''a supple instrument'' designed to be flexible enough to accommodate the ''dynamic aspects of radio transmission,'' and we believe that it is an appropriate time to create a forum for public debate.

II. Areas of Inquiry and Request for Comments

9. At this the advent of the digital age, we seek comment on how broadcasters can best serve the public interest during and after the transition to digital technology. We seek comment on challenges unique to the digital era, how broadcasters can meet their public interest obligations on both their analog and digital channels during the transition period, and on various proposals and recommendations that have been made on how broadcasters could better serve their communities of license. We welcome other proposals, and request parties to articulate legal bases for their proposals, and explain how they would serve the public interest.

A. Challenges Unique to the Digital Era

10. More than 100 DTV stations are currently on the air. These broadcasters, as well as all television licensees upon the conversion to DTV, have the flexibility either to ''multicast,'' to provide HDTV, or to ''multiplex'' DTV programming and ''ancillary and supplementary services'' at the same time. Both the Act and the Commission's implementing actions make it clear that DTV broadcasters must continue to serve the public interest. We seek comment on how to define these obligations. We are especially interested in specific proposals addressing whether and how existing public interest obligations should translate to the digital medium.

11. In implementing section 336, the Commission required that broadcasters air ''free digital video programming service the resolution of which is comparable to or better than that of today's services, and aired during the same time period that their analog channel is broadcasting.'' In doing so, the Commission stated that ''broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees.'' It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children's educational and informational programming, among other things. But as People for Better TV ask, how do these obligations apply to a DTV broadcaster that chooses to multicast? Do a licensee's public interest obligations attach to the DTV channel as a whole, such that a licensee has discretion to fulfill them on one of its program streams, or to air some of its public interest programming on more than one of its program streams? Should, instead, the obligations attach to each program stream offered by the licensee, such that, for example, a licensee would need to air children's programming on each of its DTV program streams? The Advisory Committee Report contemplates that, under certain circumstances, a digital broadcaster should not have nonstatutory public interest obligations imposed on channels other than its ''primary'' channel. A majority of the members of the Advisory Committee believe that the FCC should prohibit broadcasters from segregating candidate-centered programming to separate program streams, because they believe that would violate candidates' reasonable access and equal opportunities. We seek comment on these approaches. In addition, how should we take into account the fact that DTV broadcasters can choose either to multicast multiple standard definition DTV program streams or broadcast one or two HDTV program streams during different parts of the day? In addressing these issues, commenters should discuss the requirements of section 336(d) of the Act, which states that a ''television licensee shall establish that *all* of its program services on the existing or advanced spectrum are in the public interest.''

12. People for Better TV propose several other ways that digital broadcasters might better serve the nation's children, such as setting aside a minimum number of hours each week to provide educational programs or

services, which might include data transmission for schools. In addition, PBTV suggests that the increased information capability of digital technology could improve the current voluntary ratings system. We seek comment on these ideas. In addition, should the ratings of programs promoted by broadcasters be consistent with the rating of the program during which the promotions run? We also ask commenters to address how the policies set forth in the Children's Television Policy Statement should be applied in the digital environment.

13. By definition, ancillary and supplementary services, such as datacasting or paging, are services other than free, over-the-air services. Do a licensee's public interest obligations apply to its ancillary and supplementary services? In addressing these issues, commenters should discuss the relevance of several sections of section 336. People for Better TV contends that ''the public interest standard attends to all DTV uses of the spectrum,'' and points out that section 336(a)(2) states that the Commission ''shall adopt regulations that allow the holders of [DTV] licenses to offer such ancillary and supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.'' We note that section 336(e) requires the Commission to collect fees from DTV broadcasters that offer ancillary and supplementary services, which fees must ''recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provision of section 309(j) of this Act and the Commission's regulations thereunder.'' In addition, section 336(b)(3) simply requires the Commission to ''apply to any other ancillary and supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person.'' The Advisory Committee Report recommends that ''[b]roadcasters that choose to implement datacasting should transmit information on behalf of local schools, libraries, community-based organizations, governmental bodies, and public safety institutions.'' The Advisory Committee Report suggests that ''[t]his activity should count toward fulfillment of a digital broadcaster's public interest obligations,'' without indicating which regulations are applicable to ancillary and supplementary services. We seek comment on this proposal. How would datacasting count toward the DTV broadcasters' public interest obligations? We also seek comment more generally on whether the public interest obligations should apply to ancillary and supplementary services, and if so, how.

B. Responding to the Community

14. One of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Another of its most basic obligations in responding to the public's informational needs is to air emergency information. Technological advances, including digital technology, may allow broadcasters to fulfill these obligations better. In addition, broadcasters might make information about their programming more accessible, and therefore more responsive, to their communities of license through posting such information on websites on the Internet. As broadcasters move forward with their transition to digital technology, we seek to find ways to help them serve their communities better and more fully.

1. Disclosure Obligations

15. People for Better TV states that DTV broadcasters should ''disclose their public interest programming and activities on a quarterly basis, matched against ascertained community needs,'' gathered by reaching out to ''ordinary citizens and local leaders'' and sought through ''postal and electronic mail services as well as broadcast announcements.'' The Advisory Committee Report recommends that DTV broadcasters ''should be required to make enhanced disclosures of their public interest programming and activities on a quarterly basis, using standardized check-off forms that reduce administrative burdens and can be easily understood by the public.'' The Advisory Committee Report explains that effective self-regulation requires broadcasters to make available to the public adequate information about what they are doing. The Committee notes that the Commission already requires all TV broadcasters to place in their public files separate quarterly reports on their non-entertainment programming responsive to community needs and on their children's programming, and recommends that the Commission require broadcasters to augment these reports. The enhanced disclosures ''should include but not be limited to contributions to political discourse, public service announcements, children's and educational programming, local programming, programming that meets the needs of underserved communities, and community-specific activities.'' The Committee also recommends that digital TV broadcasters take steps to distribute public interest information more widely, through newspapers and websites. We seek comment on these recommendations.

16. Our rules currently require commercial TV broadcasters to include in their public file, among other things, citizen agreements, records concerning broadcasts by candidates for public office, annual employment reports, letters and e-mail from the public, issues/programming lists, records concerning children's programming commercial limits, and children's television programming reports. Should broadcasters provide the additional types of public service information proposed by the Advisory Committee Report and People for Better TV? Should they provide information in addition to, or in lieu of, that proposed by the Advisory Committee and People for Better TV? Should the public file contain information on what programming has closed captioning and video description? We seek comment on the extent to which the Advisory Committee's and People for Better TV's proposals parallel the Commission's previous ascertainment requirements, which the Commission repealed in the 1980s, and we ask parties to address whether the Commission's reasons for eliminating those requirements apply to our consideration of these proposals. These ascertainment guidelines set forth specific standards for broadcasters on consulting with community leaders, identifying and responding to community needs and problems through programming, and maintaining and making available various records on their ascertainment procedures.

17. We currently allow licensees to maintain their public inspection file in computer databases, and encourage licensees that elect this option to post their public file on any websites they maintain. We seek comment on how many broadcasters provide their public file in this format, and the costs and benefits of doing so. In particular, we seek comment on how broadcasters could use the Internet to ensure that they are responsive to the needs of the public. We seek comment on whether broadcasters should be required to make their public files available on the Internet, and whether those broadcasters that maintain a station website on the Internet could or should use the Internet to interact directly with the public, perhaps by establishing forums in

which the public could post comments and engage in an ongoing dialogue about the broadcaster's programming. How could these websites and forums be made accessible to persons with disabilities? In addition, we seek comment on whether it would promote responsiveness to the community to require the disclosure of certain information (e.g., the individual ultimately responsible for a program's airing or content) that would enable public input more easily and meaningfully.

2. Disaster Warnings

18. The Advisory Committee Report recommends that ''[b]roadcasters should work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit disaster warning information. The means chosen should be minimally intrusive on bandwidth and not result in undue additional burdens or costs on broadcasters. Appropriate regulatory authorities should also work with manufacturers of digital television sets to make sure that they are modified to handle these kinds of transmissions.'' The Advisory Committee Report explains that digital technology will provide innovative and new ways to transmit warnings, such as pinpointing specific households or neighborhoods at risk, and suggests that DTV broadcasters take advantage of these technological advances. The Advisory Committee Report also states that most of these innovations will require only minimal use of the 6 MHz bandwidth allocated to digital broadcasters.

19. We seek comment on the Advisory Committee Report's recommendation. One of broadcasters' fundamental public interest obligations is to warn viewers about impending disasters and keep them informed about related events. What unique capabilities does digital technology give broadcasters to deliver disaster-related information? What role should the Commission play to encourage broadcasters to deploy such technology to deliver enhanced disaster information? How can we facilitate the realization of the Advisory Committee's goals? We note that the Commission recently adopted its ''Emergency Alert System'' requirements, set forth in part 11 of the Commission's rules. Should the Commission adopt any different requirements for DTV broadcasters?

3. Minimum Public Interest Obligations

20. The Advisory Committee Report recommends that ''[t]he FCC should adopt a set of mandatory minimum public interest requirements for digital broadcasters * * * that would not impose an undue burden on digital broadcast stations, * * * should apply to areas generally accepted as important universal responsibilities for broadcasters,'' and should be phased in over several years.

21. We seek comment on the Advisory Committee Report's recommendations regarding minimum public interest requirements. Many members of the Advisory Committee were concerned that not all television broadcasters would adopt voluntary measures, while other members strongly opposed Commission-imposed minimum public interest requirements as unnecessary, preferring to give television broadcasters maximum flexibility and discretion in meeting their public interest obligations. Other parties have argued in our DTV proceeding that the Commission should adopt more specific public interest programming requirements given the new opportunities broadcasters will have in converting to DTV. They also express the concern that television broadcasters are not airing a sufficient amount of public interest programming, including local public affairs programming.

22. We invite comment on this debate. Should the Commission establish more specific minimum requirements or guidelines regarding television broadcasters' public interest obligations? Would this make the license renewal process more certain and meaningful by spelling out the public interest standard in more detail? How would such minimum requirements be defined? What additional costs, if any, would those requirements impose? Are there sufficient marketplace incentives to ensure the provision of programming responsive to community needs, obviating the need for additional requirements?

C. Enhancing Access to the Media

23. One of the Commission's long-standing goals in the area of broadcast regulation is to enhance the access to the media by all people, including people of all races, ethnicities, and gender, and, most recently, disabled persons. Congress emphasized this goal when it amended section 1 of the Communications Act in 1996 to refine this agency's mission to make available ''to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service * * * .'' It further highlighted this goal when it added provisions to the Act concerning people with disabilities, such as section 713 relating to closed captioning and video description. Given the efficiencies of digital technology, DTV broadcasters will be able to ''multicast'' and air several programs at the same time, as well as provide more information within the signal of each programming stream. We seek comment on the ways broadcasters can use this technology to provide greater access to the media.

1. Disabilities

24. Digital technology offers great possibilities for broadcasters to make their programming more accessible to persons with disabilities. For example, digital technology could enable viewers to change the size of captions in order to see both captions and the text appearing on a TV screen. In addition, digital technology permits broadcasters to provide several different audio programs, which could make video description more widely available.

25. In urging that the Commission issue this *NOI,* People for Better TV ask that the Commission emphasize, among other things, the ''expansion of services to person with disabilities.'' The group specifically suggests that a ''digital broadcast station should provide closed captioning and description services for the blind of PSAs, public affairs programming, and political programming.'' It urges that ''[c]aptioning and descriptions in these areas should be phased in over the first 4 years of a station's digital broadcasts, but should be completed no later than 2006.'' Similarly, the Advisory Committee Report recommends that digital TV broadcasters ''take full advantage'' of new digital technologies to provide ''maximum choice and quality for Americans with disabilities, where doing so would not impose an undue burden on the broadcasters.'' The Committee specifically enumerates closed captioning, video description, and disability access to ancillary and supplementary services. The Committee asks broadcasters to take full advantage of digital closed captioning technology that will enable viewers to change the size of captions to see both the caption and text otherwise behind the caption, and also calls on broadcasters to expand gradually captioning on PSAs, public affairs programming, and political programming. The Committee also requests digital broadcasters to allocate sufficient bandwidth among their multiple audio channels to make expanded use of video description technology feasible. The Committee further suggests that any digital broadcaster that provides ancillary and supplementary services not impinge on

the 9600 baud bandwidth currently set aside for closed captioning, and encourages broadcasters to explore new digital technologies to expand access to such services to persons with disabilities, such as offering text options for material presented orally and an audio option for material presented visually. The Committee finally recommends that the Commission and other regulatory authorities work with set manufacturers to ensure that modifications in audio channels, decoders, and other technical areas are designed to ensure the most efficient, inexpensive, and innovative capabilities for disability access.

26. We seek comment on these proposals. We note that the Commission has adopted closed captioning rules to implement section 305 of the 1996 Act. These closed captioning rules require broadcasters (both analog and digital TV broadcasters, among other video programming distributors and providers) to caption new programming gradually, according to a phase-in schedule, and to caption 75% of ''pre-rule'' programming by 2008. Our rules also require broadcasters to pass through the captioning provided by program suppliers, unless it requires reformatting. Certain types of programming and providers, however, are exempt from these requirements. Should the Commission impose different requirements on DTV broadcasters? We note that we have recently proposed to adopt technical standards for the display of closed captioning on DTV receivers, and to require the inclusion of closed captioning decoder circuitry in DTV receivers.

27. With respect to video description, we note that the Commission has submitted two reports to Congress, pursuant to section 305(f) of the 1996 Act (codified as section 713(f) of the 1934 Act), and recently proposed limited rules to phase video description into the marketplace. In both of its reports to Congress, the Commission noted that, since digital technology does not have the capacity limitations of analog, its more widespread deployment will, in turn, make more widespread video description available. The Commission therefore suggested that any phase-in schedules should take into account the transition to DTV. In the *Video Description Notice,* we thus proposed limited rules for analog broadcasters, but made clear our intention to extend video description to digital broadcasters. We seek comment on how the Commission could encourage DTV broadcasters to take advantage of the enhanced capabilities of the technology to provide more video description.

28. The Advisory Committee Report also recommends that DTV broadcasters make ancillary and supplementary services available to persons with disabilities. We seek comment on what types of ancillary and services broadcasters might provide, and on how they could be made accessible to persons with disabilities.

2. Diversity

29. Diversity of viewpoint, ownership, and employment have long been and continue to be a fundamental public policy goal in broadcasting. In section 309(j) of the Act, Congress directed the Commission to prescribe competitive bidding rules to promote ''economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' In part, to fulfill that mandate, we offered a bidding credit to new entrants in our recent auction of broadcast licenses. Prior to the adoption of section 309(j), and throughout its history, the Commission has also pursued a number of initiatives to diversify broadcast station ownership and employment. For example, the Commission identified ''diversification of control of the media of mass communications'' as ''a factor of primary significance'' in its comparative licensing processes, and adopted diversity and minority ''preferences'' in certain of its random selection processes. In addition, we are currently conducting a number of studies to evaluate the barriers to acquisition of broadcast licenses, and barriers to entry or growth, that small, minority-, and women-owned businesses face, as well as to examine the impact of our multiple ownership rules on broadcast station ownership, and the impact of small, minority, and women ownership of broadcast stations on service. The Commission has also adopted equal opportunity rules that are designed to foster opportunity in the broadcast industry for minorities and women. The outreach portion of these rules was struck down on constitutional grounds by the D.C. Circuit. However, we issued a *Notice of Proposed Rulemaking* (63 FR 66104, December 1, 1998) proposing new EEO rules, and expect to issue an order in the near future.

30. Broadcasters have voluntarily pursued a number of initiatives to foster diversity. Most recently, broadcasters created an investment fund, with current initial cash commitments of $175 million and ultimate purchasing power of possibly $1 billion, to spur ownership of television and radio by minorities and women. In addition, many broadcasters have made voluntary commitments to abide by equal opportunity principles, whether required by law to do so or not.

31. People for Better TV ask that DTV broadcasters exploit digital technology to reflect the diversity of their communities, through any number of practices. The group explains that network programming cannot respond to diverse needs of each community, and so local stations must come to know and provide service to diverse communities. It asks that broadcasters support the goal of diversity and report quarterly on their efforts.

32. The Advisory Committee Report states that ''[d]iversity is an important value in broadcasting, whether it is in programming, political discourse, hiring, promotion, or business opportunities within the industry.'' As such, it recommends that ''broadcasters seize the opportunity inherent in the digital television technology to substantially enhance the diversity available in the television marketplace.'' Many of the Advisory Committee's other recommendations bear on its goal of diversity in broadcasting. For example, the Advisory Committee Report advocates flexibility in multiplexing so that broadcasters can create new opportunities for minority entrepreneurship through channel-leasing arrangements, partnerships and other creative business arrangements. In addition, the Advisory Committee Report recommends that, out of the returned analog spectrum one new 6 MHz channel for each viewing community be reserved for noncommercial purposes, including educational programming directed at minority groups and other underserved segments of the community. The Committee also recommends that ''broadcasters voluntarily redouble their individual and collective efforts during the digital transition to encourage effective participation by minorities and women at all levels of the industry,'' including hiring and promotion policies that result in significant representation of minorities and women in the decision-making positions in the broadcast industry. The Committee hopes that all of the recommendations will help independent producers provide new programming. We note that several major civil rights organizations, including NAACP and La Raza, have raised similar concerns about the lack of cultural diversity on network programming.

33. The Advisory Committee Report generally does not contain separate,

stand-alone recommendations on how to achieve diversity in broadcasting; its recommendations are largely contained within other portions of the report on which we have sought comment above. In addition, as indicated, the Commission currently has a number of initiatives underway designed to diversify broadcast ownership and employment. What other ways could and should the Commission encourage diversity in broadcasting, consistent with relevant constitutional standards? We seek comment on innovative ways unique to DTV that the Commission could use to encourage diversity in the digital era, and encourage commenters to submit specific proposals.

D. Enhancing Political Discourse

34. The Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees to air programming regarding political campaigns. The Supreme Court likewise has recognized the impact television broadcasting has on our political system: ''Deliberation on the positions and qualifications of candidates is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates. A majority of the population cites television as its primary source of election information, and debates are regarded as the 'only occasion during a campaign when the attention of a large portion of the American public is focused on the election, as well as the only campaign information format which potentially offers sufficient time to explore issues and policies in depth in a neutral forum.' '' We seek comment on ways that candidate access to television and thus the quality of political discourse might be improved. We propose no rules or policies in this *NOI.* Rather our goal in this *NOI* is to initiate a public debate on the question of whether, and how, broadcasters' public interest obligations can be refined to promote democracy and better educate the voting public. This debate will greatly assist the Commission and Congress in determining what, if any, further steps should be taken on these important issues.

35. We note that some broadcasters have devoted many hours of program time to political coverage. According to a report recently issued by the National Association of Broadcasters (''NAB Report''), in the 1996 election cycle broadcasters valued the time they voluntarily devoted to political campaigns at $148.4 million. This programming took the form of coverage of debates, conventions and issue fora. Many more hours of news programming not accounted for in these figures have been dedicated to covering local and national campaigns. In addition, during the 1996 elections, the Fox, PBS, and ABC networks voluntarily provided free airtime to the major presidential candidates using a variety of formats. For example, during the last six weeks of the 1996 presidential campaign the Fox television network offered each major presidential candidate free airtime, including the opportunity to make ten one-minute position statements that were broadcast in prime time. The PBS and ABC television networks also set aside free airtime for presentations by the major presidential candidates, and the A.H. Belo Corporation provided free airtime in selected federal congressional elections and gubernatorial races. The Commission exempted these efforts from the equal opportunity requirements, finding that the proposals qualified as on-the-spot coverage of a bona fide news event. We seek comment on what the Commission can do to encourage these kinds of voluntary efforts by television broadcasters.

36. On the other hand, we note that there are indications that many television broadcasters are providing scant coverage of local public affairs, and what coverage there is may be shrinking. For instance, a 1998 study by the University of Southern California Annenberg School for Communication found that only 0.31% of local news focused on the California governor's race, compared to a figure of 1.8% in 1974. Similarly, an April 1998 Joint Report by the Media Access Project and the Benton Foundation found that, in the markets examined, 35% of the stations provide no local news, and 25% offer neither local public affairs programming nor local news.

37. The Advisory Committee Report recommends that television broadcasters provide five minutes each night between 5:00 p.m. and 11:35 p.m. (or the appropriate equivalent in Central and Mountain time zones) for ''candidate-centered discourse'' thirty days before an election. The Committee envisions maximum flexibility for broadcasters, allowing them to choose the candidates and races—federal, state, and local—that deserve more attention. The Committee envisions that stations could choose formats, which might include giving candidates one minute of airtime, conducting mini-debates, or doing brief interviews, or including the ''discourse'' in newcasts. We seek comment on this idea. More generally, are there steps the Commission can take to promote voluntary efforts to enhance political debate and the information the public receives concerning candidates?

38. Others have proposed that the Commission adopt rules requiring broadcast licensees to provide time to candidates. Although the Advisory Committee Report proposed voluntary efforts, thirteen members of the Committee—a majority—contend that the Committee's recommendations do not go far enough, and that the Commission should, among other things, require television broadcasters to provide some airtime for national and local candidates. In addition, former FCC General Counsel Henry Geller, on behalf of himself and others, ask the Commission to require television broadcasters to provide political candidates a reasonable amount of time each day in advance of a general election. More specifically, Geller et al. propose that the Commission require television broadcasters to provide twenty minutes of airtime each day thirty days before a general election in even-numbered years, and fifteen days before in odd-numbered years, when there are fewer elections. Geller et al. suggest that the Commission give television broadcasters the flexibility to decide how to provide the total of twenty minutes, except that the time should be provided between 6:00 a.m. to midnight, with at least five minutes in prime time. Geller et al. further suggest that the Communications Act requires the Commission to leave the selection of the races to be covered to the licensees. Geller et al. contend that the Commission's public interest authority extends to requiring broadcasters to provide time. We seek comment on these approaches, and on the Commission's authority to require broadcasters to provide airtime to political candidates. We also seek comment on the Advisory Committee's recommendation that the Commission should prohibit television broadcasters from adopting blanket bans on the sale of airtime to state and local candidates.

IV. Administrative Matters

39. *Comments and Reply Comments.* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties must file comments on or before March 27, 2000, and reply comments on or before April 25, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998).

40. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *edfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

41. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

42. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, S.W., 2–C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99–360), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., CY–B402, Washington, D.C. 20554.

43. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, S.W., CY–A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

44. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Arminta Henry at (202) 4810–0260, TTY (202) 418–2555, or *ahenry@fcc.gov*.

45. *Ex Parte Rules.* Pursuant to the provisions of 47 CFR 1.1204(b)(1) this is an exempt proceeding. *Ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.

IV. Ordering Clause

46. Pursuant to the authority contained in sections 4(i), 303(g), 303(r), 336 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), 336, and 403, this *Notice of Inquiry* is adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1794 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AF69

Proposed Rule: Notice of Intent To Include Several Native U.S. Species in Appendix III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international treaty, regulates international trade in certain animals and plants. Countries that have ratified or acceded to CITES monitor and regulate species listed in Appendices I, II, and III. Any country that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties; any country that is a Party may unilaterally list its native species in CITES Appendix III. Parties submit an Appendix III listing to the CITES Secretariat, which then notifies all CITES Party countries of this listing. With this proposed rule, we are announcing a proposal to include the Alligator snapping turtle (*Macroclemys temminckii*) and all species of map turtles (*Graptemys* sp.), native US species, in CITES Appendix III.

DATES: You must send us your comments on this proposed rule by March 13, 2000.

ADDRESSES: You may send comments about this proposed rule to the Chief, Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Fax number: 703–358–2276, E-mail: r9osa@fws.gov. Comments and other information received are available for public inspection, by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia, address. You may obtain information about permits by contacting the Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax number: 703–358–2095, E-mail: r9ia__@fws.gov, website: http:/www.fws.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, US Fish and Wildlife Service, Washington, DC, telephone: 703–358–1708, fax: 703–358–2276, E-mail: Susan__Lieberman@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Appendix III Background

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. CITES lists these species in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that CITES must regulate so that trade in other listed species may be brought under effective control (e.g., because of similarity of appearance between listed species and other species). Appendix III includes native species identified by any Party country that needs to be regulated to prevent or restrict exploitation and that requests the help of other Parties to monitor and control the trade of that species.

To include a species in Appendices I or II, a Party country must propose an amendment to the Appendices for

consideration at a biennial meeting of the Conference of the Parties (COP). The adoption of such a proposal is by approval of at least two-thirds of the Parties present and voting. A Party country makes the addition of a native species in Appendix III, however, independently, without the vote of other Parties, under Articles II and XVI of the CITES treaty. As described below, Appendix III listings have many advantages, and many species are currently listed in CITES Appendix III. A list of all species included in the three Appendices is presented in 50 CFR Part 23 and is also available on request from us (see **ADDRESSES**, above). A list of the species and the text of the CITES treaty are also available from the Fish and Wildlife Service website at: http://www.fws.gov. We propose to include native U.S. species in Appendix III to derive the following benefits:

1. Appendix III listings are based on an individual country's decision that its domestic conservation program for its own species involved in international trade requires the assistance of the other CITES Parties through the enforcement of CITES trade restrictions. Since the decision on Appendix-III listing is made by an individual country, no vote of the CITES Parties is required, as would be necessary for Appendix-I and -II listing actions. The effect of this independent listing is that, if an Appendix-III species' situation improves or new information shows that it no longer needs to be listed, the listing country can remove the species from the list without consulting the other CITES parties. Therefore, the United States could remove a species it listed on Appendix III without requiring a vote of the CITES Parties, or even without waiting for a meeting of the CITES Conference of the Parties.

2. Listing U.S. native species in Appendix III would in appropriate cases enhance the enforcement of State and Federal conservation measures enacted for the species in international (and domestic) trade. When a shipment containing a non-listed, native species is exported from the United States, it is a lower inspection priority for both an importing country and the Service than if the shipment contained CITES-listed species. When CITES-listed species, including Appendix-III species, are exported, the shipment is inspected and monitored both at the port of departure and the port of arrival in the importing country. Furthermore, many foreign importing countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these foreign importing countries the legal basis and priority obligation to inspect such shipments, and deal with CITES and national violations when they detect them.

3. The practical outcome of listing a species in Appendix III is that records are kept and trade in the species is monitored. We will gain and share new information on the trade with State fish and wildlife agencies, interjurisdictional fisheries commissions, and others who have jurisdiction over resident populations of this species. They will then be able to better determine the impact of the trade on resident species and the effectiveness of existing State management activities, regulations, and cooperative efforts.

4. When we list a U.S. native species on CITES Appendix III, a CITES Party is required to deny the export of a specimen of that species if it originated in the United States and was acquired or taken in violation of the laws of the United States. Closer inspection by importing countries helps to protect U.S. native Appendix-III species from illegal trade and reinforces U.S. Federal and State laws, particularly since a CITES Appendix-III export permit is issued only after we have made a legal acquisition finding.

5. When any live CITES-listed species (including Appendix-III) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival of the animals while they are in transport. All of the species proposed for listing in Appendix III by the Service through this notice are traded as live animals (although some trade in alligator snapping turtle meat also occurs).

6. By listing a species in Appendix III, international trade data and other relevant information can be gathered to help policy makers determine whether we should propose the species for addition to Appendix II, remove it from Appendix III, or retain it in Appendix III.

7. Since many States regulate commercial trade in a number of wildlife species, data gathering on Appendix-III species, through international import/export control and permit issuance, will help to control illegal wildlife harvest and trade within the United States.

Criteria for Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of the CITES treaty states that ''Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.'' Article XVI, paragraph 1, of the treaty states further that ''Any party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I.'' At the ninth meeting of the Conference of the Parties to CITES (COP9), held in the United States in 1992, the Parties adopted Resolution Conf. 9.25, which provides further guidance to Parties for the listing of their native species in Appendix III. The Resolution recommends that: ''A Party (a) Ensure that (i) The species is native to its country; (ii) Its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation; and (iii) Its national enforcement measures are adequate to implement these regulations; and (b) Determine that, notwithstanding these regulations and measures, there are indications that the cooperation of the Parties is needed to control illegal trade; and (c) Inform the Management Authorities of other range States, the known major importing countries, the Secretariat and the Animals Committee or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion.'' Therefore, we have used the following criteria in deciding to propose listing these U.S. species in Appendix III, and we will use these criteria for future proposed listings:

1. The species must be native to the United States. Although the species do not have to be endemic to the United States, a significant portion of their range should be in the United States.

2. The species must be subject to regulation within the United States, at either the State or Federal level. At least one State and preferably more than one (if found in more than one State) should have laws or regulations to control the take, trade, or possession of the species.

3. The species must be subject to international trade. We should also have some evidence that illegal trade

(violating Federal or State laws or regulations) is occurring. The supporting evidence can be extensive, documented, or even anecdotal (although if so it must be verifiable).

4. Significant evidence that international or domestic trade in the species may not be occurring at sustainable levels does not have to exist, although such information is important. However, a need must exist to monitor international trade in the species and have the assistance of importing countries to identify and possibly confiscate shipments illegally exported from the United States.

5. The Treaty does not allow the exclusion of particular parts or products for any species listed in Appendix I or the exclusion of parts or products of animal species in Appendix II. Article XVI of the treaty, however, allows for either all specimens of a species or only certain identifiable parts or products of a specimen to be listed in Appendix III. For example, the current listing in CITES Appendix III of *Swietenia macrophylla* (bigleaf mahogany) by Bolivia, Brazil, Costa Rica, and Mexico includes only logs, sawn wood, and veneer sheets. Therefore, if the criteria listed above are met, we could list any designated parts, products, or life stages of a species in Appendix III, if we inform the CITES Secretariat of the limited listing.

Submission of Information to the CITES Secretariat

Besides this proposed rule, we will consult with any other range countries where the species being considered for Appendix III can also be found. For this listing, we will consult Canada regarding *Graptemys geographica*. After reviewing the results of these consultations and the information submitted in response to this proposed rule, we will decide whether to include these species in CITES Appendix III. We will publish that information in the **Federal Register** and notify the public of our decision on whether we will submit these species to the CITES Secretariat for inclusion in Appendix III. Upon notifying the Secretariat, the listing will take effect 90 days after the CITES Secretariat informs the CITES Parties of the listing.

Change in Status of Appendix III Species Based on New Information

We will monitor the trade of any U.S. Appendix-III species. If either of the following occurs, we will consider removing the species from Appendix III: (1) International trade in the species is very limited (fewer than 5 shipments per year or fewer than 100 individual animals or plants); or (2) Trade (legal and illegal) in the species (either internationally or in interstate commerce) is determined, after consulting with the States, not to be a concern.

If, after monitoring the trade of any U.S. Appendix-III species and evaluating its status in the wild, we determine that the species meets the CITES criteria for listing in Appendix II, based on Resolution Conf. 9.24, Annex 2a or 2b, we could consider proposing listing the species in Appendix II. Based on those criteria, the species would qualify for Appendix II if ''It is known, inferred or projected that the harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by *either*: (i) Exceeding, over an extended period, the level that can be continued in perpetuity; *or* (ii) Reducing it to a population level at which its survival would be threatened by other influences.'' The species would also qualify for listing in Appendix II if ''The specimens resemble specimens of a species included in Appendix II under the provisions of Article II, paragraph 2(a), or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them.''

Practical Effects of Listing a Native U.S. Species in Appendix III

Permits and other requirements: The export of an Appendix-III species requires that before specimen(s) leave the country, the U.S. Fish and Wildlife Service's Office of Management Authority (OMA) must issue an export permit and the exporter must declare the export to our Office of Law Enforcement (LE). The requirement to declare a shipment to LE and comply with applicable regulations for wildlife exports is not changed by the CITES listing. OMA can issue a permit only if the applicant obtained the specimen(s) legally, without violating any applicable U.S. laws, including relevant State wildlife laws and regulations, and the live specimens are packed and shipped according to the IATA Live Animals Regulations to reduce the risk of injury and cruel treatment. No scientific non-detriment finding is required by the Service's Office of Scientific Authority (OSA). However, OMA, in determining if the applicant legally obtained the specimens, is required to consult relevant State agencies. Since the conservation and management of these species is under the jurisdiction of State agencies, it is their responsibility to decide if shipments follow State laws and regulations. OSA will monitor and evaluate the trade, to decide if there is a conservation concern that would require any further Federal action on our part.

Process, Findings, and Fees: To apply for a CITES permit, an applicant is required to furnish to OMA a completed CITES export permit application with a $25 check or money order to cover the cost of processing the application. You may obtain information about CITES permits from our website or from OMA (see: **ADDRESSES**, above). We will review the application to decide if the export meets the following criteria: (a) You did not obtain the specimen in violation of any U.S. Federal or State laws. You must provide documentation showing that you legally obtained the specimen. The applicant is often required to have a State license or permit to engage in certain activities with native species. When applying to OMA for a permit, an applicant is required to furnish copies of any license or permit. OMA will also contact the relevant U.S. States to verify the legality of collecting and possessing this particular native species. (b) As required by CITES, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES treaty requirement (and applicable CITES resolutions) by stating clearly on all CITES permits that shipments must comply with the IATA *Live Animals Regulations*. The LE Wildlife Inspectors are authorized to inspect shipments of CITES-listed species during export to ensure that the shipment complies with these regulations. Additional information on permit requirements is available from the OMA; additional information on declaration of shipments, inspection, and clearance of shipments is available on request from the Office of Law Enforcement.

Species Proposed for Listing in Appendix III

We propose to list the following species in CITES Appendix III:

1. *Macroclemys temminckii* (Alligator Snapping Turtle)

Macroclemys temminckii is found in the following States: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. It is confined to river systems that drain into the Gulf of Mexico. It is widely distributed in the Mississippi Valley from as far north as Kansas, Illinois, and Indiana to the Gulf. The species has been found in most river systems from the Suwanee River, Florida, to eastern Texas. *M. temminckii* is the largest freshwater turtle in North

America. Adults are usually found in deeper water of large rivers and their major tributaries and are also found in lakes, canals, oxbows, swamps, ponds, and bayous associated with river systems. Management and regulation in the States are quite varied, and include, among others: Prohibitions on all take from the wild; prohibitions on all commercial take from the wild; inclusion on State lists of endangered and threatened wildlife; prohibitions on all possession, buying, selling, sale, transport, or export; and closed seasons.

The species does not breed until 11–13 years and lays one clutch of 9–52 eggs/year. The species has declined throughout its range (mainly the Mississippi River drainage and other river systems in the Southeast), due particularly to loss of bottomland hardwood forests, but also extensive collection for personal consumption and commercial marketing of meat. Because of the species life history, collection of breeding adults can quickly become unsustainable. Intensive collecting has severely depleted local populations and altered demographic structure in others, such as in southern Louisiana. The species is considered threatened in much of the northern part of its range and has been considered for candidate status under the Endangered Species Act (ESA). IUCN (the World Conservation Union) classifies *M. temminckii* as ''vulnerable'' (a species that will likely move into the ''endangered'' category in the future, if the factors leading to its endangerment continue operating). Although commercial use is prohibited in most States other than Louisiana (which allows wild-capture) and Mississippi (farm-hatched only), people can take the species for personal use in most States, and there is almost no management of the species by State agencies. Anecdotal information from turtle trappers shows that *M. temminckii* has declined drastically throughout its range, due to over-collection and habitat loss.

Small specimens of *M. temminckii* are used for the domestic pet trade, and the larger specimens are traded as meat for human consumption. Some hatchlings offered by dealers are said to have been ''captive-bred,'' although these are likely to have been hatched from eggs collected from nests in the wild. Larger specimens, costing as much as $750 each or $1,100 per pair, are less commonly offered in the pet trade. To supply most of the hatchling turtles, more than 1,000 female turtles are held in live ponds until June, when their eggs are fertile and are laid. The turtles are then butchered for their meat, and the eggs are artificially hatched. The *M. temminckii* meat trade is much larger than the pet trade.

Analysis of import/export data obtained from the Office of Law Enforcement showed that live *M. temminckii* have been exported in increasing numbers in recent years. The annual exports of live specimens have increased from 290 in 1989, to 4,447 in 1994. We also know that illegal trade occurs. The export figures from 1989–1994 reveal that international trade in *M. temminckii* primarily for human consumption and as pets increased dramatically during the 6-year period. Besides international trade, a significant domestic trade reportedly exists.

The Chelonian Advisory Group (CAG) to the American Association of Zoological Parks and Aquariums recommended that *M. temminckii* become a high priority for future conservation efforts. The CAG reported to the Captive Breeding Specialist Group of the IUCN that this species was one of three North American turtles most in need of management.

The United States submitted a proposal to CITES COP10 in Zimbabwe (June 1997) to include the species in CITES Appendix II. The proposal was withdrawn after some countries expressed the view that international trade is small and conservation problems for the species should be dealt with through domestic measures. The State of Louisiana also opposed the proposal then. Many countries at the COP suggested that, for an endemic species such as this, inclusion in Appendix III would be preferable.

2. *Graptemys* spp.: All 12 Species of Map Turtles

The 12 Graptemys species (see Table below) are endemic to the United States, except *G. geographica*, which ranges into southern Quebec. Most species have fairly restricted ranges in various drainages in the southeastern United States. Three species, *G. geographica*, *G. pseudogeographica* (= *kohnii*), and *G. ouachitensis*, are widespread and locally common (the Mississippi and Missouri River drainages). *G. pseudogeographica* and *G. ouachitensis* probably account for most of the trade. Populations of most species have declined because of habitat degradation. Two species (*G. flavimaculata*, *G. oculifera*) are listed as threatened under the Federal Endangered Species Act and endangered by the State of Mississippi. A third species (*G. nigrinoda*) is also listed as endangered by the State of Mississippi. Reproductive potential is moderate: 20–30 eggs total in several clutches. Overall, the more restricted species in the Southeast may have lower reproductive potential.

Scientific name	Common name
Graptemys barbouri ..	Barbour's map turtle.
Graptemys caglei	Cagle's map turtle.
Graptemys ernsti	Escambia map turtle.
Graptemys flavimaculata.	Yellow-blotched map turtle.
Graptemys gibbonsi ..	Pascagoula map turtle.
Graptemys nigrinoda	Black-knobbed map turtle.
Graptemys oculifera ..	Ringed map turtle.
Graptemys pulchra	Alabama map turtle.
Graptemys versa	Texas map turtle.
Graptemys geographica.	Common map turtle.
Graptemys ouachitensis.	Ouachita map turtle.
Graptemys pseudogeographica.	False map turtle.

Hatchlings of many of the map turtle species are popular in the pet trade because of their bright colors. Turtle farmers in recent years in the Southeast have apparently achieved considerable success with captive-breeding operations, but we believe all such operations draw upon the wild to replace breeding stock. The degree of wild harvest is unknown but could be very substantial. Many species of *Graptemys* are also eaten, but it is not known if much meat is handled commercially. Export numbers have risen dramatically, from 8,600 in 1991 to 37,000 in 1993 and probably more than 100,000 in 1995. More recent data are not readily available. The majority of these may represent farm-raised animals that may or may not been taken directly from the wild.

The United States submitted a proposal to CITES COP10 in 1997 to include nine species of map turtles in Appendix II (and to leave as unlisted the three more common species). Prior to that meeting, most but not all range States supported that proposal. The proposal obtained the majority of votes, but was not adopted since it missed the necessary two-thirds majority by one vote, with 37 for and 19 against. We believe that including the whole genus (the nine rarer species and the three more heavily traded species) in Appendix III is preferable, to both adequately monitor trade and obtain the advantages of Appendix III listings.

Required Determinations

The Office of Management and Budget has not reviewed this document under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant effect on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule establishes the means to monitor the international trade in several native U.S. species and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of these species, we estimate that the costs to implement this rule will be less than $2,000,000 annually due to the costs associated with obtaining permits. Similarly, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This proposed rule does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Under Executive Order 12630, this proposed rule does not have significant takings implications since there are no changes in what may be exported. The permit requirement will not alter the current criteria for exports of these specimens.

Under Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment because it will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this proposed rule will generate information that will be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs will need to be developed to fulfill the purpose of this proposed rule. We have consulted the States, through the International Association of Fish and Wildlife Agencies, on this proposed action.

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. The referenced information collection is covered by an existing OMB approval and has been assigned clearance No. 1018–0093, Form 3–200–27, with an expiration date of January 31, 2001; implementing regulations for the CITES documentation appear at 50 CFR 23. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. The action is categorically excluded under 516 DM 2, Appendix 1.10 in the Departmental Manual. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language that interferes with its clarity? What else could we do to make this proposed rule easier to understand? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the regulation in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the regulation?

EO 12866 provides for a 60-day comment period as a general practice. But, in this case, we believe that a 60-day comment period is unnecessary for the following reasons: (1) Since the proposed listings included species that were previously proposed for listing in Appendix II at the last COP, the Service has received substantial comments in the past, and (2) The Service has had preliminary discussions with various State wildlife agencies regarding the proposed listings. In addition, we believe that the listing of these species on Appendix III should correspond closely with the next COP, which will be held in April 2000.

Authors: This proposed rule was prepared by Dr. Susan Lieberman and Timothy VanNorman, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

This proposed rule, if adopted, would result in a final decision that would amend 50 CFR 23.23 by adding Alligator snapping turtle (*Macroclemys temminckii*) and all species of map turtles (*Graptemys* sp.) to Appendix III of CITES for the United States. After analysis of the comments on the proposed rule, we will publish our decision in the **Federal Register**. If adopted, we would submit the additions to the CITES Secretariat, who has 90 days for inclusion in Appendix III and formal notification to the CITES Party countries. Therefore, the effective date for implementing the amendment to 50 CFR 23 would be 90 days from publishing the final rule. However, we will contact the Secretariat prior to publishing the final rule, if adopted, to clarify the exact time period required by the Secretariat to implement the listing.

Dated: December 21, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–1790 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000120016–0016–01; I.D. 112299C]

RIN 0648–AM70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag, Red Grouper, and Black Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues proposed regulations to implement a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These proposed

regulations would increase the commercial and recreational minimum size limits for gag and black grouper; prohibit the commercial harvest and the sale or purchase of gag, black grouper, and red grouper from February 15 to March 15 each year; and establish two areas in the eastern Gulf of Mexico that would be closed to all fishing (except fishing for highly migratory species). The intended effect of these proposed regulations is to protect the spawning aggregations for these species and to prevent overfishing.

DATES: Comments must be received no later than 5:00 p.m., eastern standard time, on February 10, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), and requests for copies of minority reports submitted by some Council members should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; or e-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: roy.crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council has proposed adjusted management measures (regulatory amendment) for the Gulf gag and black grouper fisheries for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the FMP's framework procedure for annual adjustments in total allowable catch and related measures (framework procedure). This proposed rule would implement the measures contained in the Council's regulatory amendment.

Background

The actions proposed in this regulatory amendment are intended to prevent overfishing by reducing the recreational and commercial harvest of gag, black grouper, and red grouper, and to evaluate the effectiveness of area closures in protecting gag spawning aggregations and male gag. The 1998 and 1999 NMFS Reports to Congress on the Status of Fisheries of the United States listed gag as approaching an overfished condition. The Council included black grouper in the regulatory amendment as a precautionary measure and because the identification of gag and black grouper is often confused. The Council included red grouper in the prohibition-of-sale measure because a closed season for gag and black grouper only would result in commercial fishermen targeting red grouper, with an incidental bycatch and related release mortality of gag and black grouper. Furthermore, the Council was concerned that a measure protecting only gag and black grouper would shift effort to red grouper and exacerbate problems with that stock; a recent NMFS stock assessment suggests that red grouper are overfished.

The proposed rule would (1) increase the recreational minimum size limits for gag and black grouper from 20 inches to 22 inches (50.8 cm to 55.9 cm) immediately and by 1 inch (2.5 cm) each subsequent year (effective dates 1 and 2 years, respectively, after the effective date of the final rule) until 24 inches (61.0 cm) is reached; (2) increase the commercial minimum size limit for gag and black grouper from 20 inches to 24 inches (50.8 cm to 61.0 cm); (3) prohibit the sale of gag, black grouper, and red grouper harvested from the Gulf EEZ from February 15 to March 15; and (4) establish two areas in the eastern Gulf (Madison and Swanson sites and Steamboat Lumps) that would be closed to all fishing, except fishing for highly migratory species—tunas, sharks, and billfishes. The Council has requested that NMFS' Highly Migratory Species Division (HMS Division), Office of Sustainable Fisheries, issue a compatible rule prohibiting fishing for all Atlantic highly migratory species in these two areas. The HMS Division is currently considering this request and expects to take appropriate action soon. The boundaries of the two proposed closed areas (219 square nautical miles (751 km^2) total area) are as follows:

Madison and Swanson Sites

NW corner	29°17′ N. lat., 85°50′ W. long.
NE corner	29°17′ N. lat., 85°38′ W. long.
SW corner	29°06′ N. lat., 85°50′ W. long.
SE corner	29°06′ N. lat., 85°38′ W. long.

Steamboat Lumps

NW corner	28°14′ N. lat., 84°48′ W. long.
NE corner	28°14′ N. lat., 84°37′ W. long.
SW corner	28°03′ N. lat., 84°48′ W. long.
SE corner	28°03′ N. lat., 84°37′ W. long.

The proposed minimum size limits recommended by the Council are intended to allow some female gag to reach sexual maturity and spawn before being subjected to fishing mortality. Most gag mature at ages of 3 to 4 years

and a length of about 24 inches (61.0 cm). The regulatory amendment suggests that the immediate 22-inch (55.9-cm) recreational size limit would reduce recreational landings by as much as 16 percent, and the immediate 24-inch (61.0-cm) commercial size limit would reduce commercial landings by about 6 percent. The proposal to increase the recreational size limit to 24 inches (61.0 cm) 2 years after initial implementation of this rule could reduce recreational landings by as much as 36 percent compared with the current 20–inch (50.8-cm) size limit. It is likely that the reduction in recreational harvest in subsequent years will be moderated by the increasing availability of larger gag resulting from the previous increases in the minimum size limit.

The no-sale provision from February 15 to March 15 each year is expected to reduce the commercial gag and black grouper harvest by about 10 percent and the commercial red grouper harvest by about 7 percent; however, these estimates assume that commercial fishing effort will not shift in response to this measure. Comments by the NMFS Southeast Fisheries Science Center suggest that shifts in fishing effort (i.e., for example increased effort immediately before the closure) are likely to reduce the effectiveness of this measure.

In addition to its goal of reducing the harvest, the Council acted out of concern that male gag have been depleted and that action is needed to protect them. The best scientific available information suggests that the proportion of males in the population has decreased dramatically over the past 20 years. The Council heard conflicting scientific testimony regarding the need for establishing closed areas to protect male gag and considered several options. The Council's rationale for the proposed closed areas is to allow research on the effects of area closures on gag populations. The areas selected for closure are believed to be important spawning areas for gag, which spawn in dense aggregations that are particularly vulnerable to fishing. The Council believes that a closure of the two areas to only gag fishing probably would not have the intended effect because continued fishing for other reef fish species would result in a large bycatch of gag. Thus, the proposed closure applies to all fishing (except fishing for highly migratory species). The closed areas are in relatively deep water where the survival rate of discarded bycatch species would be low. The closure would extend for 4 years to allow NMFS and the Council to evaluate the utility of closed areas for grouper management.

The two closed areas are expected to reduce commercial landings of gag by about 2 percent, black grouper by about 1.5 percent, and red grouper by about 0.6 percent. If fishing effort shifts from the closed area into other areas, the actual reduction in landings would be less. The closed areas are expected to have little effect on recreational landings.

The NMFS Southeast Fisheries Science Center expressed the following concerns regarding the proposed closed areas: (1) Existing baseline data are inadequate to evaluate changes in gag populations that could be attributed to the closure; (2) the duration of the closure (4 years) is too short to expect measurable benefits and changes resulting from the closure; (3) no criteria are proposed with which to judge the ''success'' or ''failure'' of the closure; and (4) Gulf-wide conclusions about the efficacy of closed areas would necessitate an experimental design utilizing replicate closed areas and controls. NMFS seeks public comment regarding these concerns.

Council members opposing portions of the regulatory amendment submitted three minority reports. One minority report argued that (1) the proposed measures are insufficient to prevent overfishing and would place a greater share of the burden from the reduction in harvest on the recreational sector; (2) the 1-month closure of the commercial fishery was too short to be effective; (3) the closure of the two areas to all fishing unnecessarily restricts fishing for species other than reef fish; and (4) the closure should apply only to reef fish fishing and bottom fishing with gear capable of catching reef fish. Two other minority reports argued that: (1) the delay in increasing the recreational minimum size limit to 24 inches (61.0 cm) is unjustified and recommended an immediate increase to 24 inches (61.0 cm); (2) the measures in the regulatory amendment are not based upon the best available science, specifically referring to comments by a consultant hired by the commercial industry; (3) the 1-month closure of the commercial fishery only is unfair and that the recreational fishery should also be closed; and (4) the regulatory amendment fails to reduce bycatch in the recreational fishery. Copies of the minority reports are available (see **ADDRESSES**).

Classification

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

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities as required by 5 U.S.C. § 604(a). A summary of the IRFA follows.

The Council determined that 340 commercial vessels and a small, but undetermined, number of for-hire vessels historically fishing in the EEZ of the Gulf of Mexico would be adversely affected by the action to close areas on a year-round basis. The typical commercial vessel participating in this fishery uses handline gear, has an average length of 38 ft (11.6 m), and generates average annual gross revenues of about $50,000. The minimum size limit and the seasonal no-sale provision in combination would affect 754 commercial vessels and a substantial, but unknown, number of for-hire vessels. Since some vessels will be affected by all the actions, the numbers are not additive; to add them would result in double counting. Hence, the expectation is that at least 754 commercial vessels constituting over 62 percent of the commercial fleet and a substantial, but unknown, number of for-hire vessels will be affected. All of the businesses supported by these vessels are classified as small business entities, and a substantial number of small business entities would be affected by the proposed actions. The proposed measures would be expected to reduce annual gross revenues by more than 5 percent.

The Council proposed this rule because the gag stock is approaching an overfished condition and because the Magnuson-Stevens Act requires that the Council take action to prevent overfishing. The proposed management measures are intended to prevent fishing mortality from exceeding a rate that corresponds to a 20 percent static spawning potential ratio, which was the FMP's threshold for defining overfishing at the time the regulatory amendment was prepared. The Magnuson-Stevens Act, as amended, provides the legal basis for the rule.

In addition to the actions described in this proposed rule, the Council considered and rejected the following gag management alternatives: (1) Set a total allowable catch; (2) allocate a total allowable catch between recreational and commercial users; (3) set a separate bag limit; and (4) set a commercial trip limit. The Council rejected these alternatives in order to minimize adverse impacts on small business entities and because overfishing of gag and black grouper stocks could be prevented by the selected alternatives. A discussion of the alternatives considered by the Council follows.

The proposed alternative for the gag and black grouper minimum size limit

is an immediate increase in the commercial size limit from 20 to 24 inches (50.8 cm to 61.0 cm) and an immediate increase in the recreational minimum size limit from 20 to 22 inches (50.8 cm to 55.9 cm) followed by 1–inch (2.54-cm) increases for each of the next 2 years, at which time the recreational and commercial minimum size limits will be identical—24 inches (61.0 cm). The Council considered and rejected four alternatives to change the size limits for gag and black grouper, including the status quo 20-inch (50.8–cm) minimum size limit. The Council rejected the status quo size limit because the reduction in fishing mortality would not be sufficient to prevent overfishing. The other rejected alternatives would have increased the minimum size limit from 20 inches (50.8 cm) to 24 inches (61.0 cm), but the schedule of the increase varied. The short-term adverse economic impact of the size limit increase was greatest with an immediate increase to 24 inches (61.0 cm) and least with an increase of one 1 inch (2.54-cm) every 2 years. However, postponement of the size-limit increase will also delay fishing-mortality reductions, which are needed to prevent overfishing. The proposed alternative would provide an immediate and substantial reduction in fishing mortality while minimizing adverse economic impacts. The number of for-hire businesses expected to be affected by the size limits is unknown; these businesses tend to employ traditional charter fishing boats with offshore capability.

The Council considered and rejected three alternatives, including the status quo, to the proposed February 15 to March 15 prohibition of sale of gag, black grouper, and red grouper. The Council rejected the status quo because it would not reduce overfishing. Two other rejected alternatives would have prohibited sale of these species for longer periods (2 or 4 months) and would have resulted in greater adverse economic impacts. The Council rejected these alternatives based on its belief that the proposed alternative, combined with the other proposed measures, would reduce fishing mortality sufficiently to prevent overfishing while minimizing the short-term negative impacts on small entities.

The Council considered several alternatives for the gag area closure, including proposals to close specific areas to commercial and recreational fishing during part or all of a 4-year period. The proposed alternative would prohibit recreational and commercial fishing for all species under the Council's FMPs for a 4-year period in two specific areas of the eastern Gulf where gag are known to be present. The Council requested that NMFS issue a compatible rule prohibiting fishing for highly migratory species in these two areas and establishing a marine reserve that would expire in 4 years unless, based on the effectiveness of this measure in protecting spawning aggregations and male gag, the Council and NMFS extended the measure. The Council considered and rejected four alternatives, including the status quo. Depending upon the size of the alternative reserve and the extent of fishing activity in that area, some of the rejected alternatives would have had more severe impacts on fishermen, and some would have had less severe impacts than the proposed alternative. Larger areas with extensive fishing activity would have greater adverse economic impacts but provide greater protection to spawning aggregations and male gag. To help mitigate the unavoidable negative economic impacts associated with the preferred alternative, the Council established the 4-year expiration date to ensure that the negative impacts would not continue if the objectives associated with the area closure were not being accomplished. The areas chosen for closure would provide the best cases for scientific study, would help prevent overfishing and protect spawning aggregations during the 4-year period while minimizing adverse impacts relative to some of the rejected alternatives.

No additional reporting, record keeping, or other compliance costs were identified. No duplicative, overlapping, or conflicting Federal rules were identified.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 5 0 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 20, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, add paragraph (k), reserved by the November 2, 1999, publication (64 FR 59125) and add paragraph (o) to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(k) *Closure of the Madison and Swanson sites and Steamboat Lumps.* No person may fish within the Madison and Swanson sites or Steamboat Lumps for any species of fish except highly migratory species. This prohibition is effective through [the date 4 years after the effective date of the final rule that implements this paragraph]. For the purpose of this paragraph (k), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*). The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

* * * * *

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of the area harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the bag and possession limit specified in § 622.39(b), provided the vessel is operating as a charter vessel or headboat. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

3. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iii) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—(*1*) Effective [30 days after the date of publication of the final rule implementing paragraph (d)(2)(iii)(B)(*1*) of this section] to [the date 1 year after the effective date of the final rule]—22 inches (55.9 cm), TL.

(*2*) Effective from [the date 1 year after the effective date of the final rule implementing paragraph (d)(2)(iii)(B)(*1*) of this section] to [the date 2 years after that effective date]—23 inches (58.4 cm), TL.

(*3*) Effective on and after [the date 2 years after the effective date of the final rule implementing paragraph (d)(2)(iii)(B)(*1*) of this section]—24 inches (61.0 cm), TL.

* * * * *

4. In § 622.45, paragraph (c)(4) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(c) * * *

(4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf EEZ. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

* * * * *

[FR Doc. 00–1808 Filed 1–21–00; 3:56 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 17
Wednesday, January 26, 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

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after January 1, 2000. The list of newspapers will remain in effect until June 1, 2000 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Larry L. Larson, Director, Intermountain Region, 324 25th Street, Ogden, UT 84401, Phone (801) 625–5269.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notices in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman,* Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune,* Salt Lake City, Utah.

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: *Salt Lake Tribune,* Salt Lake City, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah.

Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah.

Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star-Tribune,* Casper, Wyoming.

Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah.

Roosevelt and Duchesne District Ranger decisions: *Uintah Basin Standard,* Roosevelt, Utah.

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho.

Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho.

Idaho City District Ranger decisions: *The Idaho Statesman*, Boise, Idaho.

Cascade District Ranger decisions: *The Advocate,* Cascade, Idaho.

Lowman District Ranger decisions: *The Idaho City World,* Idaho City, Idaho.

Emmett District Ranger decisions: *The Messenger-Index*, Emmett, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune*, Casper, Wyoming.

Jackson District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Buffalo District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Big Piney District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Pinedale District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Greys River District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Kemmerer District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

Caribou National Forest

Caribou Forest Supervisor decisions: *Idaho State Journal*, Pocatello, Idaho.

Soda Springs District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.

Montipelier District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.

Westside District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum*, St. George, Utah.

Pine Valley District Ranger decisions: *The Daily Spectrum*, St. George, Utah.

Cedar City District Ranger decisions: *The Daily Spectrum*, St. George, Utah.

Powell District Ranger decisions: *The Daily Spectrum*, St. George, Utah.

Escalante District Ranger decisions: *The Daily Spectrum*, St. George, Utah.

Teasdale District Ranger decisions: *The Daily Spectrum*, St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper*, Richfield, Utah.

Loa District Ranger decisions: *Richfield Reaper*, Richfield, Utah.

Richfield District Ranger decisions: *Richfield Reaper*, Richfield, Utah.

Beaver District Ranger decisions: *Richfield Reaper*, Beaver, Utah.

Fillmore District Ranger decisions: *Richfield Reaper*, Fillmore, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*, Elko, Nevada.

Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*, Reno, Nevada.

Sierra Ecosystem Coordination Center (SECO)

Carson District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.

Bridgeport District Ranger decisions: *The Review-Herald*, Mammoth Lakes, California.

Spring Mountains National Recreation Area Ecosystem (SMNRAE)

Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*, Las Vegas, Nevada.

Central Nevada Ecosystem (CNECO)

Austin District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.

Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada.

Ely District Ranger decisions: *Ely Daily Times*, Ely, Nevada.

Northeast Nevada Ecosystem (NNECO)

Mountain City District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.

Ruby Mountains District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.

Jarbidge District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.

Santa Rosa District Ranger decisions: *Humboldt Sun,* Winnemucca, Nevada.

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate,* Price, Utah.

Sanpete District Ranger decisions: *The Pyramid,* Mt. Pleasant, Utah.

Ferron District Ranger decisions: *Emery County Progress,* Castle Dale, Utah.

Price District Ranger decisions: *Sun Advocate,* Price, Utah.

Moab District Ranger decisions: *The Times Independent,* Moab, Utah.

Monticello District Ranger decisions: *The San Juan Record,* Monticello, Utah.

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman,* Boise, Idaho.

Weiser District Ranger decisions: *Signal American,* Weiser, Idaho.

Council District Ranger decisions: *Council Record,* Council, Idaho.

New Meadows, McCall, and Krassel District Ranger decisions: *Star News,* McCall, Idaho.

Salmon and Challis National Forests

Salmon Forest Supervisor decisions: *The Recorder-Herald,* Salmon, Idaho.

Cobalt District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

North Fork District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

Leadore District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

Salmon District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

Challis Forest Supervisor decisions: *The Challis Messenger,* Challis, Idaho.

Middle Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Challis District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Yankee Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Lost River District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News,* Twin Falls, Idaho.

Burley District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit. *South Idaho Press,* Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.

Twin Falls District Ranger decisions: *The Times News,* Twin Falls, Idaho.

Ketchum District Ranger decisions: *Wood River Journal,* Hailey, Idaho.

Sawtooth National Recreation Area: *Challis Messenger,* Challis, Idaho.

Fairfield District Ranger decisions: *The Times News,* Twin Falls Idaho.

Targhee National Forest

Targhee Forest Supervisor decisions: *The Post Register,* Idaho Falls, Idaho.

Dubois District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Island Park District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Ashton District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Palisaded District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Teton Basin District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald,* Provo, Utah.

Pleasant Grove District Ranger decisions: *The Daily Herald,* Provo, Utah.

Heber District Ranger decisions: *The Daily Herald,* Provo, Utah.

Spanish Fork District Ranger decisions: *The Daily Herald,* Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune,* Salt Lake City, Utah.

Salt Lake District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah.

Kamas District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah.

Evanston District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming.

Mountain View District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming.

Ogden District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah.

Logan District Ranger decisions: *Logan Herald Journal,* Logan, Utah.

Dated: January 3, 2000.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 00–1829 Filed 1–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on February 3, 2000, at the Embassy Suites Portland Downtown, 319 SW Pine Street, Portland, Oregon 97204–2726. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to: briefings and discussion on the Survey and Manage Draft Supplemental Environmental Impact Statement, the new National Forest Management Act regulations, and the President's Roadless Area initiative. The IAC meeting will be open to the public is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Curt Loop, Acting Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: January 13, 2000.

Curtis A. Loop,

Acting Designated Federal Official.

[FR Doc. 00–1749 Filed 1–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitutional Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2000.

	Period to be reviewed
Antidumping duty proceedings	
Canada: A–122–047	
Elemental Sulphur	12/1/98–11/30/99
Husky Oil Limited	
Petrosul International	
Chile: A–337–804	
Certain Preserved Mushrooms	8/5/98–11/30/99
Nature's Farm Products	
Ravine Foods	
Japan: A–588–046	
Polychloroprene Rubber	12/1/98–11/30/99
Denki Kagaku Kogyo Kabushiki Kaisha	
Tosoh Corporations	
Mexico: A–201–504	
Porcelain-On-Steel Cooking Ware	12/1/98–11/30/99
Cinsa, S.A. de C.V.	
Esmaltactiones de Norte America, S.A. de C.V.	
Republic of Korea: A–580–810	12/1/98–11/30/99
Welded ASTM A–312 Stainless Steel Pipe	
SeAH Steel Corporation, Ltd.	
Taiwan: A–583–815	12/1/98–11/30/99
Welded ASTM A–312 Stainless Steel Pipe	
Ta Chen Stainless Steel Pipe	
The People's Republic of China: A–570–827	12/1/98–11/30/99
Certain Cased Pencils*	
China First Pencil Company, Ltd.	

	Period to be reviewed
China Second Pencil Company, Ltd. Shanghai Three Star Stationery Company, Ltd. Beijing Pencil Factory Dalian Pencil Factory Donghua Pencil Factory Harbin Pencil Factory Jiangsu Pencil Factory Jinan Pencil Factory Juihai Pencil Factory Julong Pencil Factory Qingdao Pencil Factory Shenyiang Pencil Factory Songnan Pencil Factory Tianjin Pencil Factory Xinbang Joint Venture Pencil Factory Anhui Import/Export Group Corporation Anhui Light Industrial Products I/E Corporation Anhui Provincial Imports & Exports Corporation Beijing Light Industrial Products I/E Corp. China First Pencil Company, Ltd. China Second Pencil Company, Ltd. China National Light Industrial Products Import & Export Corporation (all branches) Dalian Light Industrial Products Import/Export Corporation Jiangsu Light Industrial Products Import/Export Group Corp. Jilin Provincial Machinery & Equipment Import & Export Corporation Liaoning Light Industrial Products Import/Export Corporation Qingdao Light Industrial Products Import/Export Corporation Shandong Light Industrial Products Import/Export Corporation Sichuan Light Industrial Products Import/Export Corporation Tianjin Stationery and Sporting Goods Import/Export Corporation Zhenjiang Foreign Trade Corporation Laizhou City Guangming Pencil-Making Lead Co., Ltd. *If one of the above named companies does not qualify for a separate rate, all other exporters of certain cased pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
The People's Republic of China: A–570–506	12/1/98–11/30/99
Porcelain-O-Steel Cooking Ware* ..... Clover Enamelware Enterprises, Ltd. Lucky Enamelware Factory Limited *If one of the above named companies does not qualify for a separate rate, all other exporters of porcelain-on-steel cooking ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 20, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 00–1851 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 000106008–0008–01]

RIN: 0693–XX49

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) hereby announces the establishment of a sub-program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program to recognize bodies that accredit quality

system registrars that register organizations that produce medical devices. This sub-program is being established in accordance with NVCASE regulations in response to a request from a Federal Agency, the Food and Drug Administration (FDA). Accreditation bodies recognized by NIST may then accredit quality system registrars to register applicable organizations that demonstrate that they satisfy designated foreign or domestic mandated regulatory requirements.

The action taken under this notice addresses both generic and specific NVCASE requirements to allow NIST to support the FDA in fulfilling its obligations as designating authority under the current United States (U.S.)/ European Union (EU) Mutual Recognition Agreement (MRA) medical devices sectoral annex. If additional MRAs covering medical devices are negotiated between the United States and another country or region, additional specific requirements may also be included under this NVCASE activity.

Sub-program requirements have been developed in accordance with NVCASE regulations and with public consultation. Public input was obtained at an open meeting on April 15, 1999, and from comments received through May 15, 1999.

DATES: Applications will be received beginning February 1, 2000.

ADDRESSES: Applications for recognition may be obtained from, and returned to, Robert L. Gladhill, NVCASE Program Manager, NIST, 100 Bureau Drive, Mail stop 2100, Gaithersburg, MD 20899–2100, by fax (301) 975–5414, or E-mail at robert. gladhill@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, 100 Bureau Drive, Mail stop 2100, Gaithersburg, MD 20899–2100, telefax: (301) 975–5414, or E-mail: robert.gladhill@nist.gov.

SUPPLEMENTARY INFORMATION: This NVCASE sub-program to recognize accreditation bodies that accredit quality system registrars is being established in accordance with the NVCASE Regulations (15 CFR part 286.2(b)(3)(ii)). The generic requirements and specific criteria for this NVCASE sub-program have been established in accordance with NVCASE regulations (15 CFR Part 286.5). Public input on the establishment of both generic requirements and specific criteria for the medical devices sector was received during an open workshop held at the Department of Commerce on April 15, 1999. This workshop was announced in the **Federal Register** vol. 64, No. 42/Thursday, March 4, 1999. Follow-up comments were accepted from the public through May 15, 1999.

NIST will apply the generic requirements contained in the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 61—''General Requirements for Assessment and Accreditation of Certification/Registration Bodies'' to all applicant accreditation bodies. Quality system registrars applying to recognized accreditors shall be assessed against the requirements of ISO/IEC Guide 62—''General Requirements for Bodies Operating Assessment and Certification/ Registration of Quality Systems.'' These generic requirements will be supplemented by specific sectoral criteria contained in individual supplements to the NVCASE Program Handbook, for example, European Commission document MEDDEV 2.10/2 ''Designation and Monitoring of Notified Bodies within the framework of the directives on medical devices.'' Such specific sectoral criteria are developed through consultation with the public and appropriate experts.

As stated in the NVCASE regulations (15 CFR Part 286.4), the NVCASE program is operated on a cost reimbursement basis. It is open for voluntary participation by any U.S. based body that conducts activities relating to conformity assessment falling within the program's scope. Pursuant to this notice, NIST will accept applications from interested accreditation bodies for recognition to accredit quality system registrars under the U.S./EU MRA medical devices sectoral annex. Prospective accreditation bodies must submit a complete application and required fees by March 15, 2000 in order to be included in the initial group to be evaluated.

The evaluation of the first group of accreditation bodies applying for NVCASE recognition will begin on or about April 3, 2000. All accreditation bodies that have submitted a complete application and required fees to NIST by March 15, 2000, will be included in this initial group. Applications received subsequently will be considered on an as-received basis for evaluation after the initial group of applicants has been considered.

NIST expects to announce recognition of qualified accreditation bodies in the initial applicant group on or about June 1, 2000. On or about the same time, NIST also expects to identify and list an initial group of qualified registrars. Each registrar listed under the provisions of the U.S./EA MRA will be designated by NIST as a conformity assessment body (CAB).

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by OMB under the following control Number : 0693–0019.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget Control Number.

Dated: January 18, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–1744 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

January 20, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward applied to the 1999 limits. The current limit for Category 666–P is also being reduced for special carryforward that was applied to the 1999 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 20, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on January 27, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits:	
360	5,874,932 numbers.
361	6,831,315 numbers.
363	49,489,371 numbers.
369–F/369–P [2]	2,742,869 kilograms.
369–S [3]	837,418 kilograms.
666–P [4]	659,891 kilograms.
666–S [5]	4,287,658 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[5] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–1813 Filed 1–25–00; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of November 15, 1999 (64 FR 61852), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205). No comments were received in response to this notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for a period of three years from the date of approval by OMB.

The Safety Standard for Walk-Behind Power Lawn Mowers establishes performance and labeling requirements for mowers to reduce unreasonable risks of injury resulting from accidental contact with the moving blades of mowers. Certification regulations implementing the standard require manufacturers, importers and private labelers of mowers subject to the standard to test mowers for compliance with the standard, and to maintain records of that testing. The records of testing and other information required by the certification regulations allow the Commission to determine that walk-behind power mowers subject to the standard comply with its requirements. This information also enables the Commission to obtain corrective actions if mowers fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR part 1205.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of walk-behind power lawn mowers.

Estimated number of respondents: 20.

Estimated average number of hours per respondent: 390 per year.

Estimated number of hours for all respondents: 7,800 per year.

Estimated cost of collection for all respondents: $170,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by February 25, 2000 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 20, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–1779 Filed 1–25–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 24 February 2000.

Place of Meeting: Veterans Affairs Conference Room, Room 418, Senate Russell Office Bldg, Washington, DC.

Start Time of Meeting: Approximately 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel Lawrence J. Verbiest, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. All proceedings are open.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–1821 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DOD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A multifunction strain-temperature gauge and A Quantum Key Distribution System for encryption and authentication.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Microfabricated Multifunction Strain-Temperature Gauge.

Inventors: Jih-Fen Lei, Gustave C. Fralick and Michael J. Krasowski.

Patent Number: 5,979,243.

Issued Date: November 9, 1999.

Title: Positive-Operator-Valued-Measure Receiver For Quantum Cryptography.

Inventors: Howard E. Brandt and John M. Myers.

Patent Number: 5,999,285.

Issued Date: December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–1824 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A harness for long-term stretcher carry, A method of bonding a silicon carbide chip to a semiconductor and a method for fabricating high-density monolithic metal billets.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Harness For Long-Term Stretcher Carry.

Inventors: Joseph J. Knapik, Valerie J.B. Rice, Dennis M. Hash and William H. Harper.

Patent Number: 5,967,145.

Issued Date: October 19, 1999.

Title: Bonding Of Silicon Carbide Chip With A Semiconductor.

Inventors: Timothy Mermagen, Judith McCullen, Robert Reams and Bohdan Dobriansky.

Patent Number: 5,990,551.

Issued Date: November 23, 1999.

Title: Hot Explosive Consolidation Of Refractory Metal And Alloys.

Inventors: Laszlo J. Kecskes.

Patent Number: 5,996,385.

Issued Date: December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer
[FR Doc. 00–1826 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Rio de Flag Flood Control Study Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DoD.
ACTION: Notice (extension of comment period).

SUMMARY: Notice of Availability of the public review and comment period for the Study, City of Flagstaff, Coconino County, Arizona; dated November 1999 was published in the **Federal Register**, Volume 64, No. 223 on November 19, 1999. Due to additional concerns and requests from the public, the review period for this proposed project has been extended to March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David Compas, (213) 452–3850.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–1822 Filed 1–25–00; 8:45 am]
BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Future 404 Permit Actions for the Newhall Ranch Specific Plan and Associated Facilities along Portions of the Santa Clara River and its Side Drainages, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.
ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, the Corps of Engineers announces its intent to prepare a Draft Environmental Impact Statement (DEIS)

to address proposed future 404 permit activities associated with the phased development of the Newhall Ranch Specific Plan, and associated Water Reclamination Plant, along a portion of the Santa Clara River, Los Angeles County, California. To eliminate duplication of paperwork, the Corps of Engineers intends on preparing a joint DEIS and Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act prepared by the California Department of Fish and Game per 40 CFR 1506.2 and 1506.4.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Henderson, U.S. Army Corps of Engineers, Attention: Regulatory Branch, 2151 Alessandro Drive, Suite 255, Ventura, California 93001, phone: (805) 641–1128, e-mail: bhenderson@spl.usace.army.mil

SUPPLEMENTARY INFORMATION:

1. Backgound

The Newhall Ranch Project is located in nothern Los Angeles County and encompasses approximately 12,000 acres. The Santa Clara River and State Route 126 traverse the northern portion of the Specific Plan area. The river extends approximately 5.5 miles east to west across the site. In March 1999, the Los Angeles County Board of Supervisors approved the Specific Plan which establishes the general plan and zoning designations necessary to develop the site with residential, commercial, and mixed uses over the next 20 to 30 years. The Newhall Ranch Specific Plan also includes a Water Reclamation Plant at the western edge of the project area. Individual projects, such as residential, commercial, and industrial developments, roadways, and other public facilities would be developed over time in accordance with the development boundaries and guidelines in the approved Specific Plan. Many of these developments would require work in and near the Santa Clara River and its side drainages (''waters of the United States'').

The Newhall Ranch Company would develop most of the above facilities. However, other entities could construct some of these facilities using the approvals or set of approvals issued to The Newhall Ranch Company. The proposed 404 permit would also include routine maintenance activities to be carried out by Los Angeles County Department of Public Works using the 404 permit issued to The Newhall Ranch Company. Any party utilizing a 404 permit issued to The Newhall Company would be bound by the same conditions in the 404 permit.

2. Proposed Action

The project proponent and landowner, The Newhall Ranch Company, has requested a long-term 404 permit from the Corps of Engineers. The project to be addressed in the EIS consists of those facilities associated with the Newhall Ranch Specific Plan that would require a 404 permit including the following:

- Bank protection comprised of buried soil cement or buried riprap with native vegetation planted in the overlying soil in areas proposed for land development, and grouted riprap and gunite placed near bridge abutments;
- Two new bridges constructed across the Santa Clara River at Potrero Valley Road and Long Canyon Road;
- Modifications of several side drainages (*i.e.* San Martinez Grande, Chiquito, Potrero, Long, and Middle canyons) for drainage and flood control purposes (larger drainages noted above are proposed to be modified and reconstructed as open soft-bottom channels with grade control structures; buried storm drains are proposed for smaller drainages with peak flows of less than 2,000 cfs);
- Two wastewater lines placed across the river at Potrero Canyon and upstream of Long Canyon Road;
- Potentially other utility line crossings for water, oil, and gas lines;
- Numerous storm drain outlets, most of which are anticipated to empty into water quality control facilities prior to discharging to the river;
- Several bridges or drainage facilities associated with the Magic Mountain Parkway and Valencia Boulevard extensions;
- Bank protection associated with the Water Reclamation Plant;
- Various trails and observation platforms for recreational, educational, and wildlife viewing purposes; and
- Routine maintenance of the above flood control facilities by removal of sediment or vegetation to preserve hydraulic design capacity and protect property.

3. Scope of Analysis

The DEIS will be a project-level document which addresses a number of interrelated actions over a specific geographic area that (1) would occur as logical parts in the chain of contemplated actions, and (2) would be implemented under the same authorizing statutory or regulatory authorities. The information in the EIS will be sufficient for the Corps to make a decision on the issuance of a long-term 404 permit for the Newhall Ranch Specific Plan.

The document will be a joint Federal and state document. The California Department of Fish and Game (CDFG) will prepare an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act for the same project. The Corps and CDFG will work cooperatively to prepare a joint DEIS/DEIR document, and to coordinate the public noticing and hearing processes under Federal and state laws.

The impact analysis will follow the directives in 33 CFR 325 which requires that it be limited to the impacts of the specific activities requiring a 404 permit and only those portions of the project outside of ''waters of the United States'' over which the Corps has sufficient control and responsibility to warrant Federal review. The Corps will extend the geographic scope of the environmental analysis beyond the boundaries of ''waters of the United States'' in certain areas to address indirect and cumulative impacts of the regulated activities, and to address connected actions pursuant to NEPA guidelines (40 CFR 1508(a)(1)). In these upland areas, the Corps will evaluate impacts to the environment and identify feasible and reasonable mitigation measures and the appropriate state or local agencies with authority to implement these measures if they are outside the authority of the Corps. In evaluating impacts to areas and resources outside the Corps' jurisdiction, the Corps will consider the information and conclusions from the Final Program EIR for the Specific Plan prepared by Los Angeles County Department of Regional Planning. However, the Corps will exercise its independent expertise and judgement in addressing indirect and cumulative impacts to upland areas due to issuance of the proposed 404 permit.

4. Alternatives

Various alternatives will be addressed in the EIS that would avoid or lessen any significant impacts associated with the proposed facilities, and/or that would reduce impacts to the aquatic environment, while still meeting the overall project purpose and need. The applicant has identified the project purpose and need as providing facilities for drainage, flood control, transportation, water and wastewater treatment, and utilities, as well as maintenance activities necessary to implement the approved Specific Plan. Alternatives to be considered include modifications (*e.g.,* size, location, etc.) to the proposed facilities, or alternative designs for these facilities. Alternatives will focus on alternative methods to

achieve the required flood control, river crossing, and drainage within the context of the Specific Plan. Specific alternatives will be developed after public scoping is completed, but will include the following types of alternatives:

• Alternative bridge locations or designs including changes in the precise alignments of the proposed bridges within specified corridors across the river, and the use of alternative bridge pier and embankment designs to reduce impacts to riparian resources.

• Alternative bank protection designs including use of environmental (biotechnical) or non-traditional bank protection methods, such as geotextiles.

• Complete avoidance of encroachment where bank protection would not be placed within the banks and channel of the mainstem of the Santa Clara River and flood control improvements would not be implemented along side drainages.

• Reduced encroachment along the mainstem where the proposed encroachment along the mainstem of the Santa Clara River for bank protection would be reduced by relocating certain reaches of bank protection to upland areas, outside the banks of the Santa Clara River.

• Reduced encroachment along side drainages where the proposed number of side drainages converted to storm drains or uniform flood control channels would be reduced.

5. Scoping Process

Federal, State, and local agencies and other interested private citizens and organizations are encouraged to send their written comments to Mr. Bruce Henderson at the address provided above. This scoping comment period will expire 30 days from the date of this notice.

Significant issues to be analyzed in depth in the DEIS include:

• Hydrology, flooding, and sedimentation—a description of the potential impacts of bank protection and bridges; analysis of the change in river and tributary hydrology and hydraulics, particularly related to flood frequency and location, peak discharge, bank and channel bed erosion, water velocity, scouring potential at bridges, and alteration of sediment deposition patterns.

• Water quality—potential effects on quality of surface and ground water due to construction activities in the watercourses and due to urban stormwater runoff associated with adjacent upland development. The effect of any discharges of treated wastewater from the proposed Water Reclamation Plant on surface and ground water will also be addressed.

• Wetlands and riparian vegetation—potential effect on the nature and amount of wetland and riparian vegetation within the watercourses, and potential changes in successional patterns in the watercourses due to altered hydrology and sedimentation patterns.

• Threatened and endangered species—potential adverse impacts on listed and other sensitive species including, but not limited to, the unarmored three-spine stickleback, arroyo chub, Santa Ana sucker, least Bell's vireo, southwestern willow flycatcher, and arroyo toad due to habitat loss, changes in hydrology, and/or human encroachment. A Section 7 endangered species consultation will be conducted with the U.S. Fish and Wildlife Service for potential impacts to listed species. Impacts to designated critical habitat for the least Bell's vireo will also be addressed in the consultation.

• Fish and wildlife—in general, potential changes in populations of the native fauna due to reduction or alteration of the wetland and adjacent upland habitats along the Santa Clara River and its side drainages.

• Air quality—potential impact of emissions associated with the construction of project facilities on local and regional air quality, and conformity with the South Coast Air Quality Management Plan.

• Cultural Resources—potential impacts on archeological, ethnographic, paleontologic, and historic resources.

• Visual Resources—potential changes in the natural and man-made visual settings due to new bridges, bank protection, and urban development.

• Cumulative impacts—combined impacts of the proposed project and other ongoing and future projects affecting the Santa Clara River within both Los Angeles and Ventura counties, in relation to the Newhall Ranch Specific Plan.

Coordination will be undertaken with the U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Game, California Regional Water Quality Control Board, and the California Coastal Commission.

6. Scoping Meetings

A public scoping meeting to receive input on the scope of the EIS will be conducted on February 9, 2000 at 7:00 p.m. at the Valencia High School Auditorium, located at 27810 North Dickason Drive, Valencia, California. Participation in the scoping meeting by Federal, state, and local agencies, and other interested private citizens and organizations is encouraged.

7. DEIS Schedule

A Draft EIS is expected to be issued for public review in summer of 2000 and a Final EIS to be issued in late 2000.

Gregory D. Showalter

Army Federal Register Liaison Officer.

[FR Doc. 00–1825 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Missouri River Flood Plain Developments Between Missouri River Miles 29.6 to 38.4, St. Louis County, Missouri

AGENCY: U.S. Army Corps of Engineers, St. Louis District, DOD.

ACTION: Notice of intent.

SUMMARY: St. Louis District, U.S. Army Corps of Engineers (SLD) is issuing this notice that an Environmental Impact Statement (EIS) will be prepared to address cumulative and future impacts to the Missouri River flood plain, resulting from permitted actions evaluated under Section 404 of the Clean Water Act. The study area is from approximate Missouri River mile 29.6 to 38.4, along the right descending bank of the Missouri River in St. Louis County, Missouri. Most of this area of flood plain is currently protected by the Howard Bend Levee, which connects to the Riverport Levee. No pending regulatory permits are required at this time for proposed development projects within this area. However, it is the intent of SLD to prepare an EIS to address the cumulative impacts that have occurred to the aquatic resources in this area from permitted activities, as well as to address the impacts to the environment for several large projects forecast in the future, that may require Section 404 permits.

ADDRESSES: U.S. Army Corps of Engineers, St. Louis District, Construction-Operations Readiness Division, Regulatory Branch, 1222 Spruce Street, St. Louis, MO 63103–2833.

FOR FURTHER INFORMATION CONTACT: Mr. Danny McClendon, (314) 331–8580 or Danny D. Mcclendon@mvs02.usace.army.mil

SUPPLEMENTARY INFORMATION: During the last 25 years, the Missouri River flood plain between approximate Missouri River miles 27.0 (Earth City Levee) and 47.0 (Monarch-Chesterfield Levee) in St. Louis County, Missouri, has been subjected to extensive levee construction and development for agricultural, industrial, and commercial purposes. These activities have impacted the aquatic environment and fish and wildlife resources in this reach of flood plain. Construction of the Earth City Levee to a 500-year level of protection in 1972, construction of the Riverport Levee to a 500-year level of protection in 1988, reconstruction and recertification of the Monarch-Chesterfield Levee to a 100-year level of protection in 1997 and current proposal to raise this levee to a 500+-year level of protection, reconstruction of a portion of the Howard Bend Levee to a 100-year level of protection in 1966 and current proposal to raise this levee to a 500+-year level of protection, current construction of the Page Avenue Extension Project, and resultant commercial and industrial development and agricultural conversions has resulted in a disjointed analysis of natural resource impacts in relation to Section 404 of the Clean Water Act. Prior to February 1995, the regulatory responsibility for Section 404 permits in the Missouri River flood plain in St. Louis County, Missouri were with the Kansas City District, Corps of Engineers (KCD). As of February 1, 1995, this responsibility was transferred to the St. Louis District, Corps of Engineers (SLD). The Earth City Levee, Riverport Levee, and Page Avenue Extension Project involved legal challenges, which resulted in certain limitations and special conditions for future Corps permit actions. In addition, KCD recognized the piecemeal development of the levee protected areas within the Monarch-Chesterfield flood plain and placed a moratorium on individual developments without the preparation of an environmental analysis. The SLD continued this moratorium on development in the protected areas within the Monarch-Chesterfield flood plain until late 1996 and late 1997, upon which time the SLD issued Section 404 permits for the remaining wetlands within the levee protected area based upon two consolidated permit applications and environmental analysis. Large-scale mitigation was required for these permit actions. In 1997, the SLD initiated a study to determine the feasibility of raising the Monarch-Chesterfield Levee. The SLD is currently preparing an EIS for this project. In addition, the Missouri Department of Transportation completed an EIS for the Page Avenue Extension Project in 1992, and the National Park Service completed a Supplemental EIS for the Page Avenue Extension Project in 1995. Therefore, the scope of this current EIS will focus on the section of Missouri River flood plain between the Monarch-Chesterfield Levee and Interstate 70, and a north/south connector road corridor running through the Howard Bend flood plain, with a beginning point at Interstate 70 and a terminus at Olive Boulevard, between Route 141 (Woods Mill Road) and Creve Coeur Mill Road (to be known at the Howard Bend Flood Plain EIS). This EIS will not reevaluate the Page Avenue Extension Project, the Monarch-Chesterfield Levee Project, the Riverport or Earth City Levees, or any other previously approved or permitted projects by the Corps of Engineers located in the study area. However, the EIS will take into account the cumulative and secondary impacts of these projects on the remaining aquatic resources within the study area, and address any special conditions or requirements of these previous projects.

Alternatives

The Corps of Engineers has 3 alternative courses of action available:

1. The ''no action'' alternative would be to not grant any future Section 404 permits within the study area.

2. Continue to process Section 404 permit applications on a case-by-case basis for future developments within the Howard Bend Flood Plain study area, without developing a Strategic Area Management Plan (SAMP).

3. Evaluate the environmental effects of future developments within the Howard Bend Flood Plain study area leading to the development of a Strategic Area Management Plan (SAMP) to address the cumulative and secondary impacts of developments in this area, and develop a comprehensive plan to protect or mitigate important aquatic resources due to permitted activities.

Scoping and Public Involvement

Public involvement will be sought during scoping and conduct of the study in accordance with NEPA procedures. A public scoping process will help to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. The Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all Federal, State and local agencies, Indian Tribes, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts and permits or other approvals that may be required.

Key areas to be analyzed in-depth in the draft EIS will include the flood plain, wetlands, water quality, fisheries, wildlife, parks, infrastucture, cultural resources, socioeconomic resources, recreation, transportation, and cumulative and secondary enviromental impacts.

Other Environmental Review and Coodination Requirements

All review and coordination requirements will be fulfilled via this NEPA process. On-going permit actions and studies are continually coordinated with agencies and interested publics.

Scoping Meeting

A scoping meeting for this EIS will be held in conjunction with a public workshop that will be held in March 2000. The exact date has not been set and can be requested by calling (314) 331–8580.

Availability of Draft EIS

The draft EIS is scheduled for release in late 2000 to early 2001.

Michael R. Morrow,

COL, EN, Commanding.

[FR Doc. 00–1823 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–GS–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Exclusive License of Partially Exclusive License

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice (correction).

SUMMARY: In the previous **Federal Register** notice (Vol. 64, No. 233, pages 68090–68091) Monday, December 6, 1999 make the following corrections.

On page 68091, column one, thirtieth line in the Supplementary paragraph, the words addressing ''Concrete Technology Corporation, P.O. Box 1159, Tacoma, WA 98401'' was erroneously listed. The correct wording is ''W.F. Baird and Associates, 2981 Yarmouth Greenway, Madison, WI 53711.''

FOR FURTHER INFORMATION CONTACT: For further information, please refer to the previous point of contact official in the original notice.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–1820 Filed 1–25–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearings and Extension of Public Comment Period for the Draft Environmental Impact Statement (DEIS) for the Shock Trial of the WINSTON S. CHURCHILL (DDG 81)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a DEIS evaluating the environmental effects for the shock trial of the WINSTON S. CHURCHILL (DDG 81) at a site to be located offshore of either Norfolk, Virginia, Mayport, Florida, or Pascagoula, Mississippi. The DON is the lead agency and the National Marine Fisheries Service (NMFS) is a cooperating agency in the development of the DEIS. The comment period, previously announced in the **Federal Register** on December 10, 1999 (64 FR 69267) has been extended. This notice announces the dates and locations for the three public hearings and the extension of the public review period. Public hearings will be held in order to receive oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES AND ADDRESSES: The public hearings will be jointly hosted by the DON and the NMFS. The hearings have been scheduled as follows:

1. March 13, 2000, 7:00 PM, Granby High School Auditorium, 7101 Granby Street, Norfolk, Virginia.

2. March 14, 2000, 7:00 PM, Pensacola Junior College, Hagler Auditorium, 1000 College Boulevard, Pensacola, Florida.

3. March 15, 2000, 7:00 PM, Fletcher High School Auditorium, 700 Seagate Avenue, Neptune Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Carroll, Marconi Systems Technologies, 2611 Jefferson Davis Highway, Suite 5000, Arlington, Virginia 22202, telephone (703) 413–4099 or e-mail address at ddg81eis@tst.tracor.com.

SUPPLEMENTARY INFORMATION: Per Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the DON has prepared and filed with the EPA a DEIS evaluating the environmental effects for the shock trial of the WINSTON S. CHURCHILL (DDG 81), at a site to be located offshore of either Norfolk, Virginia, Mayport, Florida, or Pascagoula, Mississippi. The DON is the lead agency and the NMFS is a cooperating agency in the development of the DEIS. The NMFS is concurrently evaluating the DON's request for a Letter of Authorization for the Incidental Take of Marine Mammals in their regulatory role under the Marine Mammal Protection Act.

A Notice of Availability for the DEIS appeared in the **Federal Register** on December 10, 1999 (64 FR 69267). That Notice stated that comments on the DEIS were due by January 24, 2000. The DON is extending the public comment period to March 31, 2000. All written comments should be postmarked no later than that date. This comment period is expected to coincide with the NMFS comment period provided in its Advance Notice of Proposed Rule (ANPR) on the DON'S application for the taking of marine mammals incidental to the proposed shock trial of the WINSTON S. CHURCHILL. The NMFS will provide details on the ANPR by separate notice in the **Federal Register**.

The DON will conduct three public hearings to receive oral and written comments concerning the DEIS and the ANPR. A brief presentation will precede a request for public information and comments. DON representatives will be available at each hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearings and submitted in writing either at the hearing or mailed to Ms. Lyn Carroll (see address below).

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DEIS is available for public review at the following libraries:

—Beaches Branch Library, Jacksonville Public Libraries, 600 3rd Street, Neptune Beach, Florida.
—Center for Naval Analysis, The Library, 4401 Ford Avenue, Alexandria, Virginia.
—Main Library, Norfolk Public Library, 301 East City Hall Avenue, Norfolk, Virginia.
—Main Library, Jacksonville Public Libraries, 122 North Ocean Street, Jacksonville, Florida.
—Main Library, Pascagoula Public Library, 3214 Pascagoula Street, Pascagoula, Mississippi.
—Main Library, Pensacola Public Library/West Florida Regional Library, 200 W. Gregory Street, Pensacola, Florida.
—Pell Marine Science Library, University of Rhode Island, Narragansett Bay Campus, Narragansett, Rhode Island.
—SIO Library Mono, Scripps Inst of Oceanography, 9500 Gilman Drive, La Jolla, California.
—St. Mary's Public Library, 100 Herb Bauer Drive, St. Mary's, Georgia.
—University of Southhampton, National Oceanographic Library, Express Dock, Southhampton, United Kingdom.

Dated: January 20, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–1802 Filed 1–25–00; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 6 p.m., February 9, 2000.

PLACE: Ambassador Hotel, Trinity Room, 3100 I–40 West, Amarillo, Texas.

STATUS: Open. While the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the

public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board is visiting the Pantex Plant as a part of its oversight of the Department of Energy's (DOE) defense nuclear facility safety management program. The Board's enabling legislation requires health and safety oversight encompassing design, construction, operation and decommissioning activities.

The Board wishes also to avail itself of the opportunity of this visit to meet with the stakeholders and local members of the public. The session is intended to be informal and to provide an opportunity for members of the public, DOE, and its contractor employees or their representatives to comment on or provide information directly to the Board regarding matters affecting health or safety at Pantex.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Dated: January 24, 2000.

John T. Conway,

Chairman.

[FR Doc. 1966 Filed 1–24–00; 12:44 pm]

BILLING CODE 3670–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2000–1]

The Need to Stabilize and Safely Store Large Amounts of Fissionable and Other Nuclear Material That for Safety Reasons Should Not Be Permitted to Remain Unremediated

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. § 2286a(a)(5) concerning the need to stabilize and safely store large amounts of fissionable and other nuclear material that for safety reasons should not be permitted to remain unremediated.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before February 25, 2000.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: January 20, 2000.

John T. Conway,

Chairman.

Recommendation 2000–1

It is now almost six years since the Defense Nuclear Facilities Safety Board (Board) transmitted to the Secretary of Energy its Recommendation 94–1 entitled, ''Improved Schedule for Remediation in Defense Nuclear Facilities Complex.'' That Recommendation pointed to the existence of large quantities of unstable fissionable material and other radioactive material that had been left in the production pipeline following termination of nuclear weapons production. These materials required prompt conversion to more stable forms, to prevent deterioration leading to inevitable spread of radioactive contamination. Further, some of the material was in such a state that serious safety problems could be expected in a very short period of time if remediation did not take place.

The Recommendation identified safety problems posed by plutonium both as metal and in chemical compounds, and plutonium-bearing materials such as residues and spent nuclear fuel. Most of this material was and still is at three sites: Savannah River, Hanford, and Rocky Flats Environmental Technology Site (RFETS). A substantial amount of spent nuclear fuel also existed at the Idaho National Engineering and Environmental Laboratory. In the Implementation Plan responding to the Recommendation, the Department of Energy (DOE) justifiably saw fit to add to the sources of concern the enriched uranium solution stored at the Savannah River Site, accumulated from processing of spent nuclear fuel, and the highly radioactive uranium-233 in the decommissioned Molten Salt Reactor Experiment (MSRE) at the Oak Ridge National Laboratory. The highly enriched uranium solution, amounting to many thousands of gallons of liquid, is stored outside the H-Canyon in large tanks where over a period of time precipitation resulting from freezing, chemical changes, or evaporation of liquid could produce sediments posing a threat of accidental criticality. The MSRE has been shut down for many decades, and deterioration, the onset of which had already been detected, could in time release its radioactive material into the environment.

Materials Stabilized Since the Recommendation

In the years since the Recommendation, progress has been made at defense nuclear facilities in remediating the most hazardous material. Most sites have repackaged plutonium metal and oxides that had been left in containers in contact with plastic that could become a source of hydrogen gas. Deteriorating spent nuclear fuel elements stored in the 603 Basin at the Idaho National Engineering and Environmental Laboratory have been moved to the 666 Basin where control of water purity is much better. Substantial amounts of spent nuclear fuel elements and nuclear targets stored in basins at the Savannah River Site have been chemically processed and plutonium and other radioactive material so extracted have been stored. Most of the plutonium in solution at the Savannah River Site has been converted to metal and along with other plutonium metal at the Site has been packaged in seal-welded containers with inert atmospheres by means of the bagless transfer system. Almost all of the plutonium-bearing solutions in facilities at the RFETS have been chemically treated to remove the plutonium, which has then been stored as more stable oxide. Numerous drums containing radioactive residues, mostly at the RFETS, have been vented to prevent buildup of pressure by gas liberated through chemical reactions and by effects of radioactive decay. Though non-technical problems continue to plague actions to store nuclear waste in the Waste Isolation Pilot Plant (WIPP) facility in New Mexico, some storage at that site has taken place, and presumably momentum will build toward highly important shipment of more material to that disposal site. In these ways, most of the very immediate concerns prompting the Recommendation have been eased.

Furthermore, after a long period when it seemed that little was being accomplished, progress has been made toward cleanup of the important K-East and K-West fuel storage basins at the Hanford Site. Remediation of many of the cleanup problems at the RFETS has taken on momentum after a long initial period when little was accomplished. Some of the most notable advances have been made by arrangements to ship plutonium-bearing material to the Savannah River Site and to WIPP.

Approximately 300,000 liters of plutonium solution in the F-Canyon at

the Savannah River Site have now been converted to metal in the FB-Line. This material is stored in approximately 80 welded stainless steel cans that will serve as the inner containers to meet DOE–STD–3013. Plutonium solutions resulting from stabilization of Mark-31 spent nuclear fuel have also been converted to metal, and along with the preexisting metal items in the FB-Line, are also stored in similar DOE–STD–3013 inner containers.

Problems Remaining

Severe problems continue to impede other remedial measures that had been promised in the original Implementation Plan issued by the Secretary of Energy in response to Recommendation 94–1, and in Revision 1 to that Plan as issued on December 28, 1998. For a variety of reasons, many of them stated below, most of the remaining milestones in the Implementation Plans will not be met. Among the remaining problems are the following:

• Approximately 34,000 liters of plutonium-bearing solution remain in the H-Canyon at the Savannah River Site. Originally this material was to have been stabilized by March 2000 in the HB-Line Phase 2 facility; however, preparing that facility for operation was not funded in FY 1999. The revised Implementation Plan deferred stabilization until June 2002. The contractor has provided an unofficial revised estimate of completion by December 2002, but that date is alleged to be at risk because the resources (mainly technical personnel) are not available to support development of procedures and Authorization Basis documents. There is at present no high confidence startup schedule.

• In the F-Area at the Savannah River Site are approximately 800 kilograms of plutonium oxide. This oxide was to have been fired at high temperature in accordance with DOE–STD–3013 and packaged in 3013-compliant containers by May 2002. So far there has been no appreciable action toward these objectives. The stated reason has been deferral of a decision to build the Actinide Packaging and Storage Facility (APSF), though as the Board noted in an earlier letter to the Assistant Secretary for Environmental Management, a decision not to build the facility appears already to have been made. This activity is at present not funded, nor is any funding planned for a facility which could be used in stabilizing and storing this material. Though Implementation Plans had originally set target dates for accomplishment of the actions, no dates based on revised plans have been established.

• In the F-Area at the Savannah River Site are also about 400 kilograms of plutonium in the form of miscellaneous residues. Several paths for processing the residues have been proposed, depending on their characteristics, but all the plutonium should end up as metal or oxide fired at high temperature according to DOE–STD–3013. Originally all were to occur by May 2002. Other than startup of the FB-Line for characterizing the material, there has been no appreciable action so far toward the final objectives. As for the oxides referred to above, stabilization and packaging of this material were to be accomplished in the APSF, and are now being delayed.

• One tank in the F-Canyon at Savannah River contains approximately 14,400 liters of a solution of americium and curium. These elements, which are highly radioactive, are raw materials for production of californium-252 (Cf^{252}) in the High Flux Isotope Reactor at Oak Ridge. There are continuing needs for Cf^{252}. Dispersal of the americium and curium material through loss of integrity of the tank and its appendages, such as might be caused by corrosion or seismic action, would create an almost insurmountable problem of spread of radioactive contamination. The original Implementation Plan foresaw conversion of the dissolved elements by November 1999 to a vitreous form suitable for storage until use. Difficulties with the melter planned for the operation caused deferral of the operation to September 2002 according to the revised Implementation Plan. At present the activity is alleged to be under-funded, though a Request for Proposal has been issued seeking a commercial contract for the action. The most optimistic estimate of a completion date is November 2004.

About 6,000 liters of a solution of neptunium-237 (Np^{237}) are in tanks in the H-Canyon at the Savannah River Site. This isotope is the raw material for production of plutonium-238 (Pu^{238}), which has such uses as a heat source for production of electricity for some NASA missions. Initial plans were to vitrify this material by September 2003. The revised Implementation Plan stated that instead it was to be converted to oxide through use of the HB-Line Phase 2 facility. The revised Implementation Plan deferred the estimated date of completion to December 2005. An additional six-month delay is now foreseen, though that view may still be optimistic since adequacy of funding so far in the future cannot be assured.

• About 230,000 liters of highly-enriched uranyl nitrate solution are held in tanks outside the H-Canyon at the Savannah River Site. The quantity of solution will continue to increase as a result of stabilization of spent Mark 16/22 fuel elements. This solution is a hazard because freezing, evaporation, or chemical change could lead to a uranium concentration and a threat of accidental criticality. The intent has been to add depleted uranium to this solution, reducing the enrichment to a range suitable for use in fuel elements for Tennessee Valley Authority's light water reactors. Though the Tennessee Valley Authority has concurred in principle with the arrangement, an agreement to proceed has been held up by allegedly insufficient out-year funding by DOE to execute its share of the agreement. Meanwhile, the estimated costs have been increasing. An original date of December 1997 had been set for conversion of the uranium to oxide. The revised Implementation Plan delayed that date by six years to December 2003. There is no credible date for removal of the hazard. Assigned storage space for the solution is now nearly full.

• About seven tonnes of heavy metal, principally highly-enriched uranium, is still in irradiated Mark 16/22 fuel elements at the Savannah River Site. A campaign to process Mark 16/22 fuel elements was to have been completed by December 2000, according to the original Implementation Plan. The revised Plan changed that date to December 2001. The processing is now only about 25% complete, because of an alleged shortage of personnel and some technical issues delaying restart of the H-Canyon second solvent extraction cycle. Mark 16/22 fuel element processing stopped in September 1999 and will not resume until startup of second cycle operations, which is now scheduled for April 2000. The stated completion date is now about May 2003, though processing may have to be halted again in the future because of inadequate additional space for storage of uranium solutions (see the previous item).

• The Plutonium Finishing Plant (PFP) at the Hanford Site contains more than 300 kilograms of plutonium in 4,300 liters of solution. This was to have been stabilized by January 1999 through use of a vertical denitration calciner. Technical problems and allegedly insufficient financial resources hampered completion of the vertical calciner and treatment of the solution by that date, and attempts to improve the schedule through use of a prototype calciner were also inadequate. The plan

has recently been changed, and it is now intended that the plutonium will be precipitated and thermally stabilized by December 2001, by means of the magnesium hydroxide process. Although this process has already been used to stabilize thousands of liters of solution at the RFETS, DOE and its contractor at Hanford are still trying to prove it will work with the PFP solutions. The story of inability to treat plutonium solutions at PFP has been typical of a sequence of ineffective activities at that Plant, generally the result of poor management.

• Approximately 700 kilograms of plutonium exist at PFP in the form of metal or alloys. The facility has spent a significant amount of time pursuing various alternative strategies for processing and packaging this material and now plans to brush loose oxide from the metal and package it in welded double containers in accordance with DOE-STD–3013 by March 2001, a noteworthy improvement over the original Implementation Plan's date of May 2002. The oxide from brushing and some severely corroded metal would be thermally stabilized to oxide as called for by the standard and added to the material in the following item.

• About 1,500 kilograms of plutonium exist at PFP in the form of oxide. About one year ago the staff at PFP began stabilizing this material through use of two muffle furnaces. The throughput of two furnaces was not enough to deal with the quantity of material in existence, but it was initially claimed that available funds were inadequate for installation of additional furnaces. It is now planned that three additional furnaces are to be brought on line by February 2000, and four more double capacity furnaces in May 2002. The oxide will be packaged to meet DOE-STD–3013 after stabilization. The original Implementation Plan proposed completion of packaging by May 2002. The present plan would accomplish the job by about May 2004.

• Several dozen kilograms of plutonium exist at the PFP dispersed in approximately 1,600 polystyrene cubes, called polycubes. This material was used in the past in criticality studies. The polycubes have become friable through the effects of radiolysis and have become a contamination dispersal hazard. The method of treatment and stabilization of this material was under discussion for some time with various alternatives being considered. At present it is planned to oxidize the material in the muffle furnaces with the polystyrene converted to gas and the plutonium converted to stable oxide and then packaged as above. The original Implementation Plan proposed completion of treatment by some method by January 2001. Although the current goal is treatment by August 2002, this date may be delayed when the throughput of the muffle furnaces is determined in February 2000.

• Hundreds of kilograms of plutonium are in residues of various forms at PFP. These were to have been packaged and disposed of by different methods by May 2002 according to the original Implementation Plan. Cementation of sand, slag, and crucible materials began, but that process was shut down several years ago after only 240 kilograms had been treated. It is now planned that the activity will be completed by April 2004.

• The K-East and K-West fuel storage basins at the Hanford Site contain approximately 2,100 tonnes of spent uranium fuel from past operation of the N-Reactor. At one time this material was to have been chemically processed in the Purex plant, but it was left stranded when DOE decided about ten years ago to decommission Purex. The spent fuel at these basins has been corroding for some decades and since the Basins are very near the Columbia River and have been known to leak during the past, remediation of this situation has been high on the Board's priority list. Progress toward remediation had seemed adequate some time ago, but with the change of contractors at Hanford a few years ago progress appeared to stall. Resumption of progress has recently been noted, but years of schedule loss have occurred. This activity has consumed a large part of the financing that had been planned for other activities at the Hanford Site such as cleanup of PFP. The planned date of cleanout of the Basins had been December 1999 according to the original Implementation Plan. It is now anticipated that removal of fuel from the Basins will be completed by December 2003, and removal of sludge from oxidation will have been accomplished by August 2005. By that time cleanup of these Basins will have cost between one and two billion dollars.

• About one tonne of plutonium metal and oxide at the Los Alamos National Laboratory was recently declared to be excess to the needs of the defense program, and it awaits repackaging in accordance with DOE-STD–3013. According to the original Implementation Plan repackaging should take place by May 2002. At present there is no plan for repackaging any of the material.

• More than one tonne of plutonium exists in residues at the Los Alamos National Laboratory. The original Implementation Plan estimated that all would have been stabilized and repackaged by May 2002. All high risk items have been processed at this time. Although newly produced residues are being properly packaged, little work is being done at this time to take care of legacy residues. The estimated date for dealing with the legacy materials is now September 2005.

The above are not all of the materials referred to in Recommendation 94–1, but they are the major ones for which remediation schedules have fallen well behind those contemplated by the Recommendation and by the original Implementation Plan.

Fiscal Problem

The most common reason given for failure to meet schedules has been insufficient financial support. That being so, the Board does not understand why the Department of Energy has not obeyed the statutory requirement in the Atomic Energy Act as amended in 42 U.S.C.§ 2286d(f)(2),

> (2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 91 of this Act [42 U.S.C. § 2121], the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination.

In any case, simultaneous implementation of all elements of Recommendation 94–1 to schedules previously committed seems to be impossible under present circumstances allegedly because of budgetary constraints. Given this fiscal reality, DOE is faced with the need to:

1. advise Congress and the President of the shortfall in funds to satisfy all the safety enhancements to meet Recommendation 94–1, and

2. prioritize and schedule tasks to be undertaken with available funds according to consideration of risks.

Recommendation

In the Board's view, material remaining in liquids generally poses the greatest hazard, because of higher possibility of dispersal and because of potential criticality. Among these liquids the highly enriched uranium solutions stored in tanks outside the H-Canyon at the Savannah River Site require the most attention because of criticality concerns. Following the solutions in importance are unstabilized

plutonium oxides and plutonium metal remaining in containers with normal atmosphere, especially at locations in moist climates. Closely following in importance are various plutonium-bearing residues which are not as well isolated or packaged as they should be. Accordingly, the Board recommends the following technical actions in descending order of priority.

1. Stabilize the uranium solution in tanks outside the H-Canyon at the Savannah River Site, to remove criticality concerns. This should not await plans to convert the uranium to fuel for Tennessee Valley Authority's nuclear reactors.

2. Remediate the highly-radioactive solutions of americium and curium in the F-Canyon at the Savannah River Site. The currently-planned deferral of vitrification of this material is highly undesirable.

3. Remediate the solution of neptunium now stored in H-Canyon at the Savannah River Site.

4. Convert remaining plutonium solutions to stable oxides or metals, and subsequently package them into welded containers with inert atmosphere. The principal remaining solutions are in H-Canyon at the Savannah River Site, and the Plutonium Finishing Plant at the Hanford Site.

5. Treat the plutonium-bearing polycubes at PFP to remove and stabilize the plutonium.

6. Continue stabilization of spent nuclear fuel at Savannah River.

7. Stabilize and seal within welded containers with an inert atmosphere the plutonium oxides produced by various processes at defense nuclear facilities, and which are not yet in states conforming to the long-term storage envisaged by DOE–STD–3013. These oxides are found at the F Area of the Savannah River Site, the RFETS, the Plutonium Finishing Plant at the Hanford Site, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.

8. Enclose existing and newly-generated legacy plutonium metal in sealed containers with an inert atmosphere. Removal of loose oxide should of course take place just before sealing.

9. Remediate and/or safely store the various residues which are found at all three of the production sites, as well as the Lawrence Livermore National Laboratory and the Los Alamos National Laboratory.

It is assumed that the schedule for remediation of the spent fuel in the K-Basins at the Hanford Site will continue as currently planned.

The ordering of priorities should not be understood as implying a lack of importance attached to those lower in the sequence. It is simply a recognition that under the circumstances the greater hazards should be addressed first and with greatest firmness. All elements of the original Recommendation 94–1 retain their importance and none are to be considered unessential.

Also, the Board's staff has been discussing with DOE staff an ordering of tasks subject to Recommendation 94–1 in accordance with ease of their performance. Those actions which can readily be conducted within present resources should certainly go forward, as long as items of high safety priority receive the proper attention.

The severity of the problems which are the subject of this Recommendation and Recommendation 94–1 and the urgency to remediate them argue forcefully for the Secretary to avail himself of the authority under the Atomic Energy Act to ''implement any such Recommendation (or part of any such Recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.'' *See,* 42 U.S.C. § 2286d(e). The Board suggests that the Secretary avail himself of this provision.

In addition, because stabilization of materials remaining from the Weapons Production Program continues to be of such importance, the Board recommends that:

10. An estimate be made of the total funding shortfall for timely completion of all 94–1 commitments according to the accepted Implementation Plans, and

11. Congress and the President be notified of the shortfall in accordance with statutory requirements.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy, Defense Nuclear Facilities Safety Board

January 14, 2000.

The Honorable Bill Richardson, Secretary of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1000.

Dear Secretary Richardson: On May 26, 1994, the Defense Nuclear Facilities Safety Board (Board) submitted to the Secretary of Energy Recommendation 94–1, dealing with the need to stabilize and safely store large amounts of fissionable and other nuclear material that for safety reasons should not be permitted to remain unremediated. The Board was especially concerned about specific liquids and solids in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines and various defense facilities remaining in the manufacturing pipeline when pit production was terminated in 1988. On August 31, 1994, Secretary O'Leary agreed with and accepted the recommendation. On February 28, 1995, Secretary O'Leary forwarded to the Board the Department of Energy's (DOE) plan for implementation of the Board's recommendation on this issue. Subsequently, on December 28, 1998, you forwarded to the Board a revision to Secretary O'Leary's original Implementation Plan for Recommendation 94–1.

During the past year, the Board and its staff have been closely following and noting further slippage in the time table for meeting the dates set forth in the Implementation Plan. While a great deal has been accomplished in meeting the safety objective set forth in Recommendation 94–1 particularly with regard to those materials that constituted the most imminent hazards, the Board is concerned that severe problems continue to exist and delay the implementation of Recommendation 94–1. After careful consideration, the Board has concluded that the progress being made in certain of the stabilization activities addressed by Recommendation 94–1 does not reflect the urgency that the circumstances merit and that was central to the Board's recommendation.

The Board will continue to follow and urge DOE to implement Recommendation 94–1. In addition, the Board, on January 14, 2000, unanimously approved Recommendation 2000–1 which is enclosed for your consideration.

42 U.S.C. § 2286d(a) requires that after your receipt of this recommendation, the Board promptly make it available to the public in DOE's regional public reading rooms. The Board believes the recommendation contains no information that is classified or otherwise restricted.

To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have it promptly placed on file in your regional public reading rooms.

The Board will also publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 00–1743 Filed 1–25–00; 8:45 am]

BILLING CODE 3670–01–U

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 27, 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: January 20, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Household Education Survey of 2001 (NHES: 2001).

Frequency: Biennially.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 1,140; Burden Hours: 485.

Abstract: The NHES: 2001 will be a survey of households using random-digit-dialing and computer-assisted telephone interviewing. The topical components are Early Childhood Program Participation, Before- and After-School Programs and Activities, and Adult Education and Lifelong Learning. Respondents to the first two components will be parents of children from birth to age 6 who are not yet in kindergarten and children in kindergarten through grade 8, respectively. Respondents to the third component will be persons age 16 and older who are not enrolled in elementary or secondary school. This survey will provide NCES with current measures of educational participation for preschool children and adults and will also provide much needed baseline information from a national sample on the out-of-school activities of school-age children.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or 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 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. 00–1757 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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.

Dated: January 20, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Applications for Grants Under the Reading Excellence Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 39; Burden Hours: 1,872.

Abstract: This application will be used to award grants to State educational agencies for the purpose of providing reading improvement and family literacy programs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or

should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address 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. 00–1755 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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.

Dated: January 20, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision

Title: State Report Card on Teacher Preparation Programs

Frequency: One time

Affected Public: State, local and Tribal Gov'ts

Reporting and Recordkeeping Hour Burden:

Responses: 57 Burden Hours: 114

Abstract: There is a Congressionally mandated study of teacher certification and licensure requirements, called for in section 207 of P.L. 105–244, the Higher Education Amendments of 1998 (20 USC 1027). Section 207, subsection (c), paragraph (1) calls for information in three areas to be submitted by the states to the Secretary of Education within six months of the passage of the legislation (i.e. April 8, 1999). The three areas are: (Subsection (b), paragraph (1): ''A description of the teacher certification and licensure assessments, and any other certification and licensure requirements, used by the State.''; • Subsection (b), paragraph (5): ''The percentage of teaching candidates who passed each of the assessments used by the State for teacher certification and licensure, disaggregated and ranked, by the teacher preparation program in the State from which the teacher candidate received the candidate's most recent degree, which shall be made available widely and publicly''; • Subsection (b), paragraph (6): ''Information on the extent to which teachers in the State are given waivers of State certification or licensure requirements, including the proportion of such teachers distributed across high-and low-poverty districts and across subject areas.''

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@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. 00–1756 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Energy Technology Center; Notice of Intent To issue a Federal Assistance Solicitation (PS)

AGENCY: National Energy Technology Center (NETL), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue a PS No. DE–PS26–00NT40781 entitled ''Energy Efficient Building Equipment and Envelope Technologies, Round II.'' The PS will solicit the submission of innovative technologies that have the potential for significant energy savings in residential and commercial buildings. Through this solicitation, the Department of Energy is seeking to support projects that are advancing energy efficient equipment, envelope technologies and whole building technologies. Specifically, the objective of the procurement is to accelerate high-payoff technologies that, because of their risk, are unlikely to be developed in a timely manner without a partnership between industry and the Federal government.

DATES: The solicitation will be available from NETL's Internet address at http://www.netl.doe.gov/business. Prospective offerors who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business/index.html. Provide your e-mail address and click on the heading ''Energy Efficiency and Renewable Energy.'' Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public. Those prospective offerors who obtain a copy of the solicitation through the Internet should check the location frequently for any solicitation amendments. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted

and/or honored. The actual solicitation document will allow for requests for explanation and/or interpretation. Solicitations will not be distributed in paper form or on diskette. The solicitation will be available on or about February 12, 2000. The exact date and time for the submission of proposals will be indicated in the solicitation. However, at least a forty-five day response time is currently planned.

ADDRESSES: Acquisition and Assistance Division, U.S. Department of Energy, National Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Vicky L. Shears, Contract Specialist, U.S. Department of Energy, National Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880; Telephone 304/285–4083.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select a group of projects programmatically balanced with respect to: (1) Technology category (equipment end users, envelopes and whole buildings); (2) building type (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale but will support proof of concept projects.

The research and development areas of interest are as follows: Building Equipment—energy conversion and control equipment supplying lighting, space conditioning (heating, cooling, dehumidification and ventilation), water heating, refrigeration, appliance services and electric power to building occupants and commercial operations; Building Envelope—materials, components and systems for windows, walls, roofs, foundations and other elements which comprise building exteriors and provide thermal integrity and day lighting; and Whole Building Technologies—the integration of components and systems which govern overall energy use and indoor environmental quality in a building.

The solicitation covers research in four technology maturation stages. Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing; Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing).

Multiple awards are expected regardless of the technology maturation stage(s) proposed. For projects spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Additional decision points may be required depending upon the length of any one maturation stage. It is anticipated that eight to ten awards will be made with an average total estimated cost from $200,000 to $1,000,000. It is DOE's desire to encourage the widest participation including the involvement of individuals, corporations, non-profit organizations, and state or local governments or other entities. In order to gain the necessary expertise to review proposals, non-Federal personnel may be used as evaluators or advisors in the evaluation of proposals, but will not serve as members of the technical evaluation committee. This particular program is covered by Sections 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of at least 20 percent from non-Federal sources for research and development projects. In accordance with FAR 52.232–18, ''Availability of Funds,'' funds are not presently available for this procurement. The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made.

Issued January 19, 2000.

Randolph L. Kesling,

Division Director, Acquisition and Assistance Division.

[FR Doc. 00–1801 Filed 1–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11690–001–Alaska]

Alaska Village Electric Cooperative, Inc.; Notice of Availability of Draft Environmental Assessment

January 19, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for Alaska Village Electric Cooperative, Inc.'s proposed Old Harbor Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project would be located near the city of Old Harbor, Alaska on Kodiak Island, partly on the Kodiak National Wildlife Refuge. This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Commission's Public Reference Room, Room 2A, at 888 First Street, NE, Washington, DC 20426, and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments to this DEA should be filed within 45 days from the date of this notice and addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, please contact Nan Allen, Project Coordinator, at (202) 219–2938.

David P. Boergers,

Secretary.

[FR Doc. 00–1752 Filed 1–25–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0226, expiring

April 30, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 25, 2000.

ADDRESSES: Comments should be submitted to the attention of Air Docket A–91–42; Environmental Protection Agency; 401 M Street, SW. (MC–6102); Washington, DC 20460 (submissions may be faxed to (202) 260–4400). The Air Docket is located in Room M–1500; Waterside Mall (Ground Floor); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. The docket may be inspected Monday through Friday from 8:00 a.m to 5:30 p.m. A reasonable fee may be charged for copying docket materials. For further questions, contact the docket at (202) 260–7549.

FOR FURTHER INFORMATION CONTACT: Kelly Davis at phone (202) 564–2303, fax: (202) 565–2096 or email: *davis.kelly@epa.gov*

SUPPLEMENTARY INFORMATION:

Title: Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990 (OMB Control No. 2060–0226; EPA ICR No. 1596.04) expiring 4/30/00. This is a request for extension of a currently approved collection.

Abstract: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA Section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under Section 612 for anyone who sells or, in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Under CAA Section 114(c), emissions information may not be claimed as confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: EPA estimates 330 total respondents per year for all SNAP activities included in this ICR. Each respondent will respond only once, with a total annual hour burden of 10,363 hours. The labor cost associated with these hours is approximately $52.00/hour, equaling a total labor cost of $538,772 per year. The annualized start-up and operation and maintenance costs total $44,452. The total annual cost burden of this information collection is $583,224.

An ICR SF–83 Supporting Statement for this collection request is available in Air Docket A–91–42 Category IX–A–22 by contacting the Docket at (202) 260–7548. This supporting statement provides detailed explanation and calculations of the burden presented above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 18, 2000.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 00–1837 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–3]

Notice of Correction and Clarification of Statements Contained in Notice of Proposed Source Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation and in Notice of Proposed Source Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction and clarification.

SUMMARY: EPA is hereby correcting and clarifying certain statements contained in the Notice of Proposed Source Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation as well as certain similar statements contained in the Notice of Proposed Source Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation relating to the Navajo Nation's authority under the Clean Air Act to regulate emissions from the Four Corners Power Plant and the Navajo Generating Station, coal-fired power plants located on the Navajo Indian Reservation near Farmington, New Mexico and Page, Arizona, respectively.

FOR FURTHER INFORMATION CONTACT: David R. LaRoche, Office of Air and Radiation (OAR 6101–A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; (202) 564–7416.

SUPPLEMENTARY INFORMATION: On September 8, 1999, EPA published two notices in the **Federal Register** requesting comment on proposed source-specific federal implementation plans (FIPs) under the Clean Air Act (CAA or the Act) for the Four Corners Power Plant (FCPP) and the Navajo Generating Station (NGS). See 64 FR 48731 (September 8, 1999); 64 FR 48725 (September 8, 1999). As detailed more fully in those notices, EPA intends the proposed FIPs, if adopted, to federalize provisions from the New Mexico and Arizona State Implementation Plans with which FCPP and NGS, respectively, had previously been complying. By letter dated November 8,

1999, Arizona Public Service Company (APS) submitted comments on the proposed FIP for FCPP and, among other things, raised questions about certain statements contained in the proposed FIP relating to the Navajo Nation's authority to regulate emissions from FCPP under the CAA. Similar statements relating to the Navajo Nation's CAA authority to regulate emissions from NGS are contained in the proposed FIP for that facility. EPA is hereby correcting and clarifying these statements. EPA had intended to correct and clarify these statements in the preambles to the final FIPs, which have not yet been promulgated. However, EPA believes that it is appropriate to correct and clarify these statements at this time because of confusion they may have caused in pending litigation involving EPA's Tribal Authority Rule (TAR), 63 FR 7254 (Feb. 12, 1998), under the Clean Air Act.

EPA stated in the preamble to the proposed FIP for FCPP that ''[u]pon review of the circumstances surrounding the location and operation of FCPP on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation.'' 64 FR at 48732. Similarly, in the preamble to the proposed FIP for NGS, EPA stated that ''[u]pon review of the circumstances surrounding the location and operation of NGS on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation.'' 64 FR at 48726. These and several other statements in the preambles to the proposed FIPs mistakenly suggested that EPA had determined the question of whether the Navajo Nation may regulate FCPP and NGS under the CAA. However, as EPA will reiterate in the preambles to the final FIPs for both facilities, the proposed FIPs were based on federal authority only. In order to exercise such federal authority over FCPP and NGS, EPA did not need to, nor did it, decide whether the Navajo Nation may regulate those facilities under the CAA.

EPA is aware of covenants, contained in leases between FCPP and the Navajo Nation and between NGS and the Navajo Nation, relating to the Nation's authority to regulate these facilities. APS and NGS contend that these covenants prevent the Navajo Nation from regulating either of the facilities under the CAA. While in the preamble to the final TAR EPA expressed its view that Congress has delegated authority to eligible tribes to implement CAA programs over all air resources within the exterior boundaries of their reservations, EPA also noted that the Agency: will consider on a case-by-case basis whether special circumstances exist that would prevent a tribe from implementing a CAA program over its reservation. * * * If EPA determines that there are special circumstances that would preclude the Agency from approving a tribal program over a reservation area, the Regional Administrator would limit the tribal approval accordingly under [the TAR]. 63 FR at 7256.

In issuing the proposed FIPs, EPA did not determine whether the Navajo Nation may regulate FCPP or NGS in light of the covenants. EPA is not required to, and does not intend to, decide that issue in the context of taking final action on the proposed FIPs. Moreover, to date, the Navajo Nation has not applied to be treated in the same manner as a state (TAS) for purposes of regulating FCPP or NGS under the CAA. If the Navajo Nation applies to run a CAA regulatory program covering FCPP or NGS, EPA would evaluate at that time the effect, if any, of the covenants on the Nation's authority to regulate those facilities under the CAA. Before any such determinations would be made, FCPP, NGS and the public would have the opportunity, both at the time of the TAS eligibility application, as well as at the time the Navajo Nation applies for CAA program approval, to express their views to EPA.

Dated: January 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–1838 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6529–6]

Access to Confidential Business Information by Hazmed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Access to Data and Request for Comments.

SUMMARY: EPA will authorize its contractor, HAZMED to access confidential business information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations (40 CFR Part 2, Subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. HAZMED will provide support to the Office of Solid Waste (OSW) in operating the RCRA CBI Center (CBIC), a secure storage areas that contains all records/documents that are received by OSW with a claim of business confidentiality.

DATES: Access to confidential data submitted to EPA will occur no sooner than February 7, 2000.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Comments should be identified as ''Access to Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contract No. OW–0502–NAWW, HAZMED will assist the Information Management Branch, within the Communications, Information, and Resources Management Division, of the Office of Solid Waste (OSW) in operating the RCRA Confidential Business Information Center (CBIC). OSW collects data from industry to support the RCRA hazardous waste regulatory program. Some of the data collected from industry are claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR Part 2, Subpart B, OSW has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals. HAZMED shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual. HAZMED will also provide data base management support to the RCRA CBIC document tracking system.

The U.S. Environmental Protection Agency has issued regulations (40 CFR Part 2, Subpart B) that outlines business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. HAZMED will be authorized to have access to RCRA CBI under the

EPA ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.''

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide HAZMED access to the CBI records located in the RCRA CBIC. Access to RCRA CBI under this contract will take place at EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: January 11, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–1836 Filed 1–25–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 18, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0878.

Expiration Date: 08/31/02.

Title: Wireless E911 Rule Waivers for Handset Based Approaches to Phase II ALI Requirements.

Form No.: N/A.

Estimated Annual Burden: 2,000 burden hours annually, 40 hours per response; 50 responses.

Description: The information filed as part of a one-time petition for waiver of § 20.18(e) will be used to ensure timely compliance with the Commission's critical E911 regulations, provide the Commission with current information on the station of Automatic Location Identification technology, and thus ensure the dependability and responsiveness of E911 services.

Federal Communications Commission

OMB Control No.: 3060–0900.

Expiration Date: 12/31/02.

Title: Compatibility of Wireless Services with Enhanced 911—Second Report and Order in CC Docket 94–102.

Form No.: N/A.

Estimated Annual Burden: 2,190 burden hours annually, approximately 8 hours per response; 270 responses.

Description: The information by manufacturers or carriers wishing to incorporate new or modified E911 call processing modes will be used to keep the Commission informed of technological developments and thus to ensure that the Commission's regulations are kept current and reflect the preferences of the industry in complying E911 regulations. The information to be submitted with applications equipment authorizations for analog cellular telephones are necessary to ensure industry compliance with 911 call completion regulations. The voluntary education program will enable consumers to use wireless analog sets to make E911 calls in an informative manner, ensuring a fast, reliable response.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1799 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

January 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 4,000 respondents. 8,000 annual responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 8,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The *Third Report and Order* in CC Docket 94–102 revises rules applicable to wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, in providing call location information as part of Enhanced 911 (E911) services. The Commission adopted the *Third R&O* to encourage the deployment of the best location technology for each area being served, promote competition in E911 location technology, and speed implementation of E911. As part of these revised rules, the *Third R&O* adopted a requirement that, by October

1, 2000, all wireless carriers subject to the E911 rules report to the Commission their plans for implementing Phase II E911 features. This means the report should be filed one year in advance of the deadline for implementation (i.e., October 1, 2001). This report must include the technology they plan to use to provide caller location and whether this technology requires replacement or upgrades of any wireless handsets. If the carrier employs a handset-based approach, the carrier should also report its plans to provide location information to roamers under the ''best practice'' obligations imposed by the *R&O*. Carriers may revise their plans after the report is filed, however, carriers must file updates notifying the Commission of any changes to their files plans within 30 days of the adoption date of any such change. This paperwork burden is scheduled to go into effect on March 3, 2000.

This is a new collection imposed on carriers. The information submitted to the Commission will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for preparing for full Phase II E911 implementation. These advance reports will provide helpful, if not essential, information for coordinating carrier plans with those of manufacturers and PSAPs. Also, they will assist the Commission's efforts to monitor Phase II developments and to take necessary actions to maintain the Phase II implementation schedule.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1798 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–75]

Emergency Alert System National Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 19, 2000, the Commission released a public notice announcing the February 25, 2000, meeting and agenda of the Emergency Alert System National Advisory Committee (NAC). The meeting will serve to advise the Commission on Emergency Alert System issues.

DATES: February 25, 2000, 9:00 A.M.–Noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Commission Meeting Room, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Emergency Alert System Staff, Federal Communications Commission, 445 12th Street, SW, Commission Meeting Room, Washington, DC 20554 (phone: (202) 418–1228) (fax: (202) 418–2817).

SUPPLEMENTARY INFORMATION: In 1994, the Federal Communications Commission (FCC) established the Emergency Alert System (EAS) to replace the Emergency Broadcast System (EBS). EAS uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. At the same time, the FCC added a new part 11 to its rules containing EAS regulations. 47 CFR 11. The National Advisory Committee (NAC) was established to assist the FCC in administering EAS. Its third annual meeting will be held on February 25, 2000, in Washington, DC and the general topic will be emergency communication matters relating to EAS.

Summary of Proposed Agenda:

—Registration

—Opening remarks by NAC Chair

—Presentations by the National Weather Service and the Federal Emergency Management Agency

—FCC update on EAS actions

—Reports from NAC working groups

—Reports from the Society of Broadcast Engineers and the Society of Cable Television Engineers Working Groups and PEPAC

—Discussion concerning EAS and DTV and digital radio

—Future EAS requirements and NAC recommendations to FCC

—Election of EAS Officers

—Adjournment

Administrative Matters:

Attendance at the NAC meeting is open to the public, but limited to space availability. Members of the general public may file a written statement with the FCC at the above contact address before or after the meeting. Members of the public wishing to make an oral statement during the meeting must consult with the NAC at the FCC contact address prior to the meeting. Minutes of the meeting will be available after the meeting at the contact address.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–1796 Filed 1–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011275–009.

Title: Australia/United States Discussion Agreement.

Parties: Columbus Line, P&O Nedlloyd Limited, Australia-New Zealand Direct Line, Cool Carriers AB, Seatrade Group N.V., FESCO Ocean Management Inc.

Synopsis: The proposed amendment would permit the parties to enter into joint service contracts, multiple carrier individual service contracts, and to adopt voluntary guidelines with respect to their individual service contracts.

Agreement No.: 203–011435–005.

Title: APL/MLL/Lykes Space Charter Agreement.

Parties: American President Lines, Ltd., APL Co. PTE LTD, Mexican Line Limited, Lykes Lines Limited, LLC.

Synopsis: The proposed modification adds Lykes Lines Limited as a party to the agreement and makes other non-substantive changes to the agreement.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1856 Filed 1–25–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 00–02]

Crowley Liner Services, Inc. and Trailer Bridge, Inc., v. Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Crowley Liner Services, Inc. and Trailer Bridge, Inc. (''Complainants''), against Puerto Rico

Ports Authority (''Respondent''). The complaint was served on January 20, 2000. Complainants allege that Respondent violated sections 10 (d)(1) and (d)(4) of the Shipping Act of 1984, 46 U.S.C. app. § § 1709 (d)(1) and (d)(4), and violated the terms of a Settlement Agreement in FMC Docket No. 95–10, by assessing excess dockage charges on the basis of a new vessel measurement system contrary to the terms of its tariffs, giving no notice of such changes, and not following procedures as set forth in the Settlement Agreement.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 22, 2001, and the final decision of the Commission shall be issued by May 22, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1855 Filed 1–25–00; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Senator International Ocean LLC, 11250 NW 25th Street, Suite 124, Miami, FL 33172. Officers: Christian M. Ollino, Vice President (Qualifying Individual), Mario Alfonso, President.

Cargo Management International, 401 N. Oak Street, Inglewood, CA 90302. Officer: Ray A. Vidal, C.E.O. (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Pioneer International Corp., 80 Everett Avenue, Suite 325, Chelsea, MA 02150. Officers: Pamela Ann Grzonka, Asst. Vice President (Qualifying Individual), David W. Maloney, President.

PMG Containerline, Inc., 6300 Hazeltine National Dr., Suite 100, Orlando, FL 32822. Officers: James G. Gain, President (Qualifying Individual), Thomas R. Murray, Vice President.

HR Services d/b/a HR Shipping Services, 211 North Union Street, Suite 100, Alexandria, VA 22314. Officer: Nigel J. McCallum, V.P. Operations (Qualifying Individual).

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Senator International Freight Forwarding LLC, 11250 N.W. 25th Street, Suite 124, Miami, FL 33172. Officers: Mario Alfonso, President (Qualifying Individual), Uwe Kirschbaum, Chairman.

Commercial Transport Co., 16820 Lee Road, Humble, TX 77396, Robert R. Chapa, Sole Proprietor.

Martin E. Button, Inc., 55 New Montgomery Street, Suite 400, San Francisco, CA 94105. Officers: Jennifer Rixford, Secretary (Qualifying Individual), Martin E. Button, President.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–1857 Filed 1–25–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 12:00 noon, Monday, January 31, 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. Proposals concerning renovation of a Federal Reserve Bank building. (This item was originally announced for a closed meeting on January 24, 2000.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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: January 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1891 Filed 1–21–00; 4:36 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the following Standard Form is cancelled: SF 539, Medical Record—Abbreviated Medical Record.

Since the Department of Defense (DoD) is the only agency still using this form, they have created a new form—DD 2770, Abbreviated Medical Record. This form is available from the DoD's web page. Address: http://web1.whs.oad.mil/icdhome/DDEFORMS.HTM

DATE: Effective on January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: January 11, 2000.

Barbara M. Williams,

Deputy Standard and Optional, Forms Management Officer.

[FR Doc. 00–1854 Filed 1–25–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–20]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

Continuing Medical Education (CME) Activity Registration Form—(0923–0013)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. As stated in CERCLA, the Administrator of ATSDR is charged to ''assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on this topic''.

The development and use of activity registration forms for documenting participation in these activities at these meetings is an integral part of this process. This attendance documentation process is required by the Accreditation Council for Continuing Medical Education (ACCME), the body that authorizes agencies and institutions to award nationally recognized continuing medical education (CME) credit. As a condition of relicensure, physicians in 40 states are required to participate in CME courses. Individual physicians in these states are required to submit the number of hours of CME credit to state boards of professional registration at the time of relicensure. Failure by the physician to provide this information in a timely fashion will result in suspension of professional licensure.

This request is for a 3-year extension of the current OMB approval of uniform CME activity registration forms—one machine entry form and the other manually entered—to serve as the initial step in the development of an attendance documentation system. Other than their time, there will be no cost to the respondents.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden per response	Total burden
Manual Entry Registration Form	2,000	1	4/60	133
Scantron Registration Form	3,000	1	5/60	250
Total	.....	.....	.....	383

Dated: January 20, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–1762 Filed 1–25–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0595]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 26, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has

submitted the following proposed collection of information to OMB for review and clearance.

Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA

Description: The Food and Drug Administration Modernization Act of 1997 (FDAMA) contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. This section of FDAMA also modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities.

The final rule published elsewhere in this issue of the **Federal Register** amends FDA's regulations in part 803 (21 CFR part 803) and revokes part 804 (21 CFR part 804) to reflect the changes to medical device reporting made by FDAMA. The final rule has also been amended to implement the exemptions for manufacturers and distributors of cigarettes and smokeless tobacco products discussed in the next paragraphs.

In accordance with 5 CFR 1320.8(d), requests for public comment were published in the **Federal Register** of May 12, 1998 (63 FR 26069 and 63 FR 26129). Several comments were received in response to the proposed rule. A detailed discussion of the comments and FDA's response is included in the preamble to the final rule published elsewhere in this issue of the **Federal Register**.

Four comments objected that FDA did not follow the congressional recommendation in the conference report on FDAMA that FDA limit the time that distributors be required to keep records to a maximum of 6 years. The direct final rule required that distributors keep records for 2 years or the expected life of the device, whichever is greater.

FDA carefully considered the recommendations of the conference committee. The agency determined that the protection of the public health would not be adequately served if distributor recordkeeping was limited to a period of 6 years. Under the new quality system regulations contained in part 820 (21 CFR part 820), manufacturers (including initial distributors of foreign manufacturers) must retain records for a period equal to the design and expected life of the device (but no less than 2 years). The agency believes it is appropriate to require distributors to retain records for the same time period. This is especially important because distributors are no longer required to report any adverse event information to the agency, and the agency's primary access to the distributor complaint information is its periodic inspection and examination of the distributor records.

FDA considered electronic retention of distributor records. Prior to FDAMA and the proposed rule, the agency had not prohibited the electronic retention of records, nor did it intend to prohibit electronic recordkeeping based upon the proposal. When the distributor recordkeeping requirements were shifted from part 804 to part 803, the language remained largely unchanged. However, in order to avoid further confusion regarding electronic retention of records, the agency is modifying proposed § 803.18(d)(1) to clarify that distributor records may be either written or electronic.

Three comments stated that it is inappropriate to refer to the quality systems regulation (§ 820.198) in describing distributor recordkeeping because § 820.198 does not apply to distributors.

FDA agrees and has revised § 803.18(d) accordingly to remove the reference to § 820.198. FDA is substituting language to identify the relevant requirements from § 820.198 that apply to distributors who are not importers. However, FDA notes that § 820.198 does apply to importers of devices.

Two comments suggested that the reporting timeframe for importers should be changed to from 10 days to 30 days.

FDA agrees with these comments and has revised the final rule. Previously, importers were included in part 804 with the reporting requirements for distributors. Because distributors are no longer required to report, part 804 is eliminated and importers are included in part 803 with manufacturers. The 30-day timeframe is consistent with the timeframe for manufacturers.

One comment suggested that the form for reporting adverse events (FDA Form 3500A) should be revised to refer specifically to importers. Another comment asked for clarification as to whether a person who sells directly to the ultimate user may be considered an ''importer.''

The agency agrees that the fields to be filled out by importers on FDA Form 3500A should be specified within the regulation. Because the requirements and burdens would not be affected by revising the style and format of § 803.43, the agency is modifying the section to be consistent with §§ 803.32 and 803.52, which describe the information to be submitted on the MEDWATCH form. Proposed § 803.43 will be redesignated as § 803.42 in the final rule.

The agency notes that, because ''distributors'' had previously been defined to include ''importers,'' FDA Form 3500A does not specifically address importer information and does not use the term, ''importers.'' However, block F of the MEDWATCH form is identified for use by device user facilities and distributors. An importer should continue to complete blocks A, B, D, E, and F until the form is revised to remove references to ''distributor'' and replace them with ''importer.'' The agency clarifies that firms who purchase products from a foreign manufacturer and sell directly to the ultimate user are considered retailers and not importers under part 803, and they are not required to report.

One comment suggested that distributor reporting is important for the protection of the public health and recommended that, as an alternative to distributor reporting, FDA should require manufacturer contact information on the labeling to ensure proper adverse event reporting.

The agency agrees that consumers are likely to contact medical device distributors with their device complaints. Without distributor reporting, it is possible that the agency will not receive information regarding some complaints. However, under FDAMA, the agency no longer has the authority to require distributor reporting. Although FDA cannot require distributor reporting, FDA encourages distributors to report adverse event information to manufacturers so that they may investigate and report it as appropriate. The suggestion that FDA require manufacturer contact information on the labeling is beyond the scope of this rule and FDA will consider it separately.

One comment objected that FDA incorrectly interpreted section 422 of FDAMA regarding the regulation of tobacco products, tobacco ingredients, and tobacco additives. The comment stated that section 422 of FDAMA only means that nothing in FDAMA shall affect whether FDA has the authority to regulate tobacco products. The comment further said that section 422 of FDAMA does not mean, as FDA believes, that the requirements, such as medical device report (MDR) reporting, for manufacturers and distributors of

tobacco products are unchanged by FDAMA.

The agency disagrees with this comment. Section 422 of FDAMA states that ''Nothing in this Act or the amendments made by this Act shall be construed to affect the question of whether the Secretary of Health and Human Services has any authority to regulate any tobacco product, tobacco ingredient, or tobacco additive.'' Although this language may suggest that FDAMA is simply silent regarding the agency's authority to regulate tobacco, section 422 goes on to state that ''Such authority, if any, shall be exercised under the Federal Food, Drug, and Cosmetic Act as in effect on the day before the date of the enactment of this act.'' Beyond the question of whether the agency has authority to regulate tobacco, this language directs the agency as to how it should exercise such authority once pending litigation is resolved.

Under section 422 of FDAMA, therefore, Congress neither affirms nor denies the agency's authority to regulate tobacco, but it does direct the agency to continue regulating tobacco as it had been doing prior to FDAMA (if authority to regulate tobacco exists). Prior to FDAMA, distributor reporting and manufacturer and distributor certification were required under the Federal Food, Drug, and Cosmetic Act (the act). If the agency were to exercise its authority under the act ''as in effect on the day before the date of the enactment of [FDAMA],'' distributor reporting and manufacturer and distributor certification requirements would continue to apply to manufacturers and distributors of cigarettes and smokeless tobacco products.

However, while the agency disagrees with the comment's interpretation of section 422 of FDAMA, FDA finds persuasive the comment's arguments that tobacco manufacturers should be exempt from the requirement of annual certification of MDR's and that distributors should be exempt from MDR reporting requirements under the residual authority of the act. The agency has authority under section 519(c) of the act (21 U.S.C. 360i(c)) to exempt, by regulation, any person from the medical device reporting requirements upon a finding that such reporting is not necessary to ''assure that a device is not adulterated or misbranded or * * * otherwise to assure its safety and effectiveness.'' The agency finds that the statutory criteria for exemption are met in light of the fact that Congress has repealed the requirements for manufacturer and distributor annual certification and distributor reporting. A reasonable assurance of the safety and effectiveness of tobacco products will be provided by the remaining medical device reporting requirements, that is, reporting and recordkeeping required of manufacturers and importers and recordkeeping required of distributors.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
803.15	50	1	50	4	200
803.19	150	1	150	3	450
803.22(b)(2)	100	1	100	0.25	25
803.33 (FDA Form 3419)	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.55 (FDA Form 3417)	1,000	20	20,000	1.1	22,000
Total					25,060

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per recordkeeper	Total hours
803.17	2,000	1	2,000	3.3	6,600
803.18	39,764	1	39,764	1.5	59,646
Total					66,246

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens under the direct final rule (63 FR 26069) are explained in the following paragraphs.

I. Reporting Requirements

Prior to the program change reflected in this rule, distributors (including importers) were required to submit supplemental information under § 804.32. Distributors (who are not importers) are no longer required to submit MDR reports (including supplemental reports), and FDA has determined that it will not be necessary for importers to submit supplemental information except when FDA requests additional information under § 803.15. FDA has revised the final rule accordingly. Section 803.15 provides that FDA may request a reporter to submit additional or clarifying information concerning an MDR report when FDA determines that additional information is necessary for the protection of the public health. The burden estimate for § 803.15 includes only the burden for importers.

Prior to the program change reflected in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this rule, § 803.19 is modified to transfer the exemption provisions for importers of medical devices from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices are no longer required to submit MDR reports under this rule.

The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.22(b)(2) provided that, if a manufacturer erroneously receives information about an adverse event concerning a device that they had not manufactured, the manufacturer must submit the report to FDA along with a cover letter explaining that the device in question was not manufactured by that firm. This final rule amends § 803.22(b)(2) to apply the same requirement to importers. The requirements of § 803.22(b)(2) were not previously reviewed by OMB under the PRA. Thus, the estimated burden reflects FDA's experience with this provision with regard to manufacturers and includes the estimated burden for both manufacturers and importers.

Prior to the program change reflected in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this rule, user facilities are required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission. FDA Form 3419 is being revised to reflect this change.

Under this rule the reporting requirement for importers of medical devices previously codified under § 804.25 is being transferred to § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. Section 803.40 requires importers to submit reports within 30 days after learning of the reportable event rather than 10 days as provided in § 804.25; this change does not affect the burden.

This rule does not amend § 803.55, but FDA is seeking approval for FDA Form 3417 on which baseline reports are to be submitted. The agency's estimate is based on FDA's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. As stated previously, FDA is also exempting manufacturers and distributors of cigarettes and smokeless tobacco products from the requirement of annual certification. Therefore, under this rule, §§ 803.57 and 804.30 are being eliminated.

Because distributors, including distributors of cigarettes and smokeless tobacco products, will no longer be required to report, the final rule also removes §§ 804.25 (distributor reporting), 804.32 (supplemental information), and 804.33 (alternative reporting requirements).

II. Recordkeeping Requirements

Prior to the program change reflected in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint processing, and documentation of information related to MDR's. Under this rule, the requirements for establishing written MDR procedures for importers of medical devices have been transferred to § 803.17. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities, and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Prior to the program change reflected in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this rule, § 803.18 is modified to transfer the recordkeeping requirements for importers and other distributors of medical devices, including cigarettes and smokeless tobacco products from § 804.35; therefore, § 804.35 is removed. As discussed previously, this recordkeeping may be done in an electronic format.

Under the proposed rule, distributors of cigarettes and smokeless tobacco products would have been required to establish written internal procedures for evaluating and reporting events. Because distributors of cigarettes and smokeless tobacco products will not be required to report under the final rule, § 804.34 is removed.

Dated: January 18, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–1786 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]

Food Labeling; Health Claims and Label Statements; Request for Scientific Data and Information; Reopening of Comment Period

Editorial Note: Due to a printing error FR Document 00–1127 did not appear in the printed version of the **Federal Register** on Wednesday, January 19, 2000. It is printed in its entirety below.

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for written comments; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 75 days the comment period for the submission of scientific data, research study results, and other related information on four substance-disease relationships that was announced in the **Federal Register** of September 8, 1999 (64 FR 48841). This action is being taken in response to requests for more time to submit data and information to FDA.

DATES: Written comments by April 3, 2000.

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

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 8, 1999 (64 FR 48841), FDA requested scientific data, research study results, and other related information on four substance-disease relationships in order to reevaluate the scientific evidence for these relationships. FDA stated that it was taking this action to comply with a

recent court decision in which FDA was instructed to reconsider whether to authorize health claims for these relationships in dietary supplement labeling. The four health claims are: ''Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer,'' ''Consumption of fiber may reduce the risk of colorectal cancer,'' ''Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease,'' and ''0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form.'' The agency stated that it will use the data and information to determine, for each substance-disease relationship, if an appropriate scientific basis exists to support the issuance of a proposed rule to authorize a health claim for the relationship.

The agency received requests to reopen the comment period on the September 8, 1999, notice to allow interested persons to comment after reviewing FDA's guidance on the ''significant scientific agreement'' standard for health claims in 21 U.S.C. 343(r)(3)(B)(i) and 21 CFR 101.14(c). The availability of that guidance was announced on December 22, 1999 (64 FR 71794). The agency has agreed to reopen the comment period on the September 8, 1999, notice for 75 days in response to the requests.

The agency has established four dockets to compile information relating to each of the four topic areas; docket numbers are specified in Table 1 below. FDA is allowing 75 days for the submission of additional data. Individuals and organizations submitting information or data relating to a specific topic should submit two copies of the information to the Dockets Management Branch (address above) by April 3, 2000. Separate submissions should be made for each topic area, and each submission should be identified with the appropriate docket number given below. Submissions received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Scientific data, research study results, and other related information on four substance-disease relationships that is submitted to the FDA must be considered publicly available. If used in the agency's scientific review, information submitted to FDA will become part of the public record for the evaluation of these relationships.

TABLE 1.

Topic	Docket No.
Antioxidant vitamins and cancer	91N–0101
Fiber and colorectal cancer	91N–0098
Omega-3 fatty acids and coronary heart disease	91N–0103
Folic acid (dietary supplement vs. food form) and neural tube defects	91N–100H

Dated: January 11, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–1127 Filed 1–18–00; 8:45 am]

BILLING CODE 4160–01–F

Editorial Note: Due to a printing error FR Document 00–1127 did not appear in the printed version of the **Federal Register** on Wednesday, January 19, 2000. It is printed in its entirety above.

[FR Doc. 00–1127 Filed 1–25–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N–0113; DESI 2847]

Pediatric Parenteral Multivitamin Products; Drug Efficacy Study Implementation; Announcement of Marketing Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that pediatric parenteral multivitamin drug products that are formulated as set forth in this document are effective for treating certain vitamin deficiencies. FDA is further announcing the conditions for the approval and marketing of the drug products for the indications for which they are now regarded as effective.

DATES: Supplements to the conditionally approved new drug application (NDA) must be submitted by March 27, 2000.

ADDRESSES: Communication in response to this notice should be identified with the reference number DESI 2847 and directed to the attention of the appropriate office named below.

Supplements to the conditionally approved NDA (identify with NDA number): Division of Metabolic and Endocrine Drug Products (HFD–510), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications (ANDA's): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

Requests for opinion of the applicability of this notice to a specific product: Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of July 27, 1972 (37 FR 15027), FDA announced its evaluations of reports received from the National Academy of Sciences/National Research Council Drug Efficacy Study Group on certain parenteral multivitamin drug products. The agency stated that the products, as then formulated, lacked substantial evidence of effectiveness for their claimed indications. The conclusion was not based on any individual vitamin's lack of effectiveness; rather, certain essential vitamins in the available formulations were either not included or included in too great or too small amounts.

In a followup notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), FDA granted parenteral multivitamin products a temporary exemption (paragraph XIV, category 11) from the time limits imposed for the implementation of the Drug Efficacy Study. The temporary exemption was based primarily on the recognized critical medical importance of

parenteral multivitamin therapy and the lack of alternative drugs. The agency allowed these products to remain on the market as then formulated, while complex technical and medical problems were being resolved and rational formulations were being developed and tested.

To facilitate the determination of rational multivitamin formulations and their evaluation, FDA accepted the assistance offered by the American Medical Association (AMA). In December 1975, the AMA submitted its ''Guidelines for Multivitamin Preparations for Parenteral Use,'' which recommended specific amounts of individual vitamins and procedures for evaluating the stability, safety, and effectiveness of the formulations.

The AMA report stressed that the guideline formulations were estimated from the existing Recommended Daily Allowance, which in turn is based on dietary population surveys. The assumptions applied by the AMA to correlate the established dietary allowances of the essential vitamins to the parenteral administration of vitamins to patients in various disease states required that clinical trials be conducted to evaluate the guideline formulations.

FDA accepted the AMA guidelines with minor reservations and, subsequently, in a **Federal Register** notice published July 13, 1979 (44 FR 40933), amended the terms of the December 1972 paragraph XIV temporary exemption to require conditional approval of an NDA or supplemental NDA within specific time frames as a condition for the continued marketing of a parenteral multivitamin drug product. The agency agreed not to initiate regulatory proceedings against these products under the following requirements: (1) Reformulation in accord with the AMA guidelines as to the number and quantities of vitamins in the formulation; (2) an outline of proposed studies along the lines set forth in the AMA report, to evaluate the stability and biological availability of the reformulated preparations; and (3) a plan or protocol for clinical effectiveness studies in accord with the AMA guidelines. A reformulated product could be marketed in place of the previous formulation after agency review and conditional approval of the submission. This procedure allowed continued marketing of parenteral multivitamins while clinical testing and evaluation of the AMA guideline formulations were being carried out.

After evaluating available data, FDA classified the AMA guideline adult formulations as effective in the **Federal Register** of September 17, 1984 (49 FR 36446). That notice also revoked the paragraph XIV exemption of all products listed in the notice, including the following pediatric product conditionally approved under the terms of the July 13, 1979, notice (in accordance with current labeling practice, amounts previously listed in United States Pharmacopeia units have been converted to weights):

NDA 18–920; M.V.I. Pediatric (lyophilized), each vial containing vitamin A (retinol) 0.7 milligrams (mg)/vial, vitamin D (ergocalciferol) 10 micrograms (µg)/vial, vitamin E (dl-alpha tocopherol acetate) 7 mg/vial, vitamin C (ascorbic acid) 80 mg/vial, folic acid 140 µg/vial, niacin (niacinamide) 17.0 mg/vial, vitamin B_2 (riboflavin-5′-phosphate sodium) 1.4 mg/vial, vitamin B_1 (thiamine hydrochloride) 1.2 mg/vial, vitamin B_6 (pyridoxine hydrochloride) 1.0 mg/vial, vitamin B_{12} (cyanocobalamin) 1 µg/vial, dexpanthenol (d-pantothenyl alcohol) 5.0 mg/vial, biotin 20 µg/vial, vitamin K (phytonadione) 200 µg/vial; Astra Zeneca, 50 Otis St., Westborough, MA 01581 (formerly held by Armour Pharmaceutical Co., P.O. Box 511, Kankakee, IL 60901).

The September 17, 1984, notice stated that further evaluation of pediatric parenteral multivitamin formulations containing vitamin E was required. The notice went on to state that until the time that such evaluation was completed, pediatric multivitamin products could be marketed only under the terms and conditions of the July 13, 1979, **Federal Register** notice.

The effectiveness of the AMA guideline pediatric formulations was considered by an AMA–FDA committee in the Workshop on Multivitamin Preparations for Parenteral Use on August 21, 1985, and by FDA's Endocrinologic and Metabolic Drugs Advisory Committee on March 3 and 4, 1986. Based on a review of the committees' recommendations and other available material, the Director of the Center for Drug Evaluation and Research has determined that the 1975 AMA guideline pediatric formulations are effective multivitamin preparations.

It should be noted, however, that although the intravenous preparation is properly formulated in composition and dosage amount of essential vitamins, it supplies inadequate amounts of vitamin A, particularly to low birth weight infants. In addition, the issue of whether the solubilizers used in pediatric preparations contribute to toxicity remains unresolved. Further study of the pediatric formulations is needed to determine a vehicle for administration of multivitamins to low birth weight infants that will provide adequate amounts of vitamin A and avoid possible toxicity associated with the use of solubilizers employed in pediatric preparations. Future approval of a more appropriate formulation for low birth weight infants may restrict the labeling of the current formulation to use in infants weighing more than 3 kilograms (kg).

The continuing exemption announced in the September 17, 1984, notice for pediatric parenteral multivitamin products is hereby revoked. These products are regarded as new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). Therefore, a fully approved NDA is required to market them. M.V.I. Pediatric (NDA 18–920) received conditional approval under the terms of the July 13, 1979, notice. A supplemental NDA is now required for M.V.I. Pediatric to revise the labeling and to update its conditionally approved NDA.

In addition to the product specifically named above, this notice applies to any product that is not the subject of an approved application and is identical or, under 21 CFR 310.6, is related or similar to M.V.I. Pediatric. It is the responsibility of all drug manufacturers and distributors to review this notice to determine whether it covers any drug product that they manufacture or distribute. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Prescription Drug Compliance and Surveillance (address above).

II. Conditions for Approval and Continued Marketing of Formulations Evaluated as Effective

A. Effectiveness Classification

FDA has reviewed all available evidence and concludes that pediatric parenteral drug products formulated as listed below are effective for the applicable indication set forth in the labeling conditions below.

B. Conditions for Approval and Marketing

FDA is prepared to approve ANDA's and supplements to the conditionally approved NDA named above under conditions described here.

1. Form of Drug

(a) *Intravenous multivitamin preparations.* The preparation is an aqueous solution or lyophilized powder suitable for reconstitution and/or secondary dilution prior to intravenous

infusion and contains the specified amounts of the following individual vitamins, either as the moiety listed below or as the chemically equivalent salt or ester.

(i) *Pediatric formulation* (intended for infants and children under age 11)[1]

Ingredient	Amount per unit dose
Fat-Soluble Vitamins	
A (retinol)	0.7 mg
D (ergocalciferol or cholecalciferol)	10 µg
E (alpha-tocopherol)	7 mg
K_1 (phytonadione)	200 µg
Water-Soluble Vitamins	
C (ascorbic acid)	80 mg
Folic acid	140 µg
Niacin	17 mg
B_2 (riboflavin)	1.4 mg
B_1 (thiamine)	1.2 mg
B_6 (pyridoxine)	1.0 mg
B_{12} (cyanocobalamin)	1.0 µg
Pantothenic acid	5.0 mg
Biotin	20.0 µg

[1] For infants weighing less than 1 kg the daily dose is 30 percent of the indicated formulation. Do not exceed this daily dose. For infants weighing 1 to 3 kg the daily dose is 65 percent of the indicated formulation.

(b) *Intramuscular multivitamin preparations*. The preparation is a sterile solution suitable for intramuscular injection.

(i) *Pediatric formulation*. The vitamin composition of the pediatric intramuscular formulation shall be that of the pediatric intravenous preparation named above without the fat-soluble vitamins.

2. Labeling Conditions

(a) The label bears the statement ''Caution: Federal law prohibits dispensing without prescription.''

(b) The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

(i) *Intravenous Pediatric Multivitamin Preparations*. This formulation is indicated as a daily multivitamin maintenance dosage for infants and children up to 11 years of age receiving parenteral nutrition.

It is also indicated in other situations where administration by the intravenous route is required. Such situations include surgery, extensive burns, fractures and other trauma, severe infectious diseases, and comatose states, which may provoke a ''stress'' situation with profound alterations in the body's metabolic demands and consequent tissue depletion of nutrients.

The physician should not await the development of clinical signs of vitamin deficiency before initiating vitamin therapy.

This product (administered in intravenous fluids under proper dilution) contributes intake of these necessary vitamins toward maintaining the body's normal resistance and repair processes.

Patients with multiple vitamin deficiencies or with markedly increased requirements may be given multiples of the daily dosage for two or more days as indicated by the clinical status.

(ii) *Intramuscular Pediatric Multivitamin Preparations*. This product is indicated for infants and children up to ll years of age for conditions in which: (1) Intake or absorption of the water-soluble vitamins is inadequate and oral intake must be supplemented; or (2) there is a known or suspected serious depletion of the water-soluble vitamins, and immediate treatment by the intramuscular route is advisable.

Conditions that may require parenteral administration of water-soluble vitamins may include disorders that can affect oral intake, gastrointestinal absorption, or utilization. Such conditions include comatose states, persistent vomiting, prolonged fever, severe infectious diseases, major surgery, extensive burns, fractures and other traumas, diarrhea, achlorhydria, or liver disease.

The physician should not await the development of clinical signs of vitamin deficiency before initiating therapy because there are few specific or pathognomonic signs of early vitamin deficiencies.

(c) CONTRAINDICATIONS: Known hypersensitivity to any of the vitamins or excipients in this product or a preexisting hypervitaminosis.

Allergic reaction has been known to occur following intravenous administration of thiamine and vitamin K. The formulation is contraindicated prior to blood sampling for detection of megaloblastic anemia, as the folic acid and the cyanocobalamin in the vitamin solution can mask serum deficits.

(d) PRECAUTIONS: (The following paragraph should appear in bold type)

Caution should be exercised when administering this multivitamin formulation to patients on warfarin sodium-type anticoagulant therapy. In such patients, periodic monitoring of prothrombin time is essential in determining the appropriate dosage of anticoagulant therapy.

Adequate blood levels of vitamin E are achieved when this product is given to infants at the recommended dosage. Larger doses or supplementation with oral or parenteral vitamin E are not recommended because elevated blood levels of vitamin E may result.

Studies have shown that vitamin A may adhere to plastic, resulting in inadequate vitamin A administration in the doses recommended with this product. Additional vitamin A supplementation may be required, especially in low birth weight infants.

3. Marketing Status

(a) Marketing of the drug product that is now the subject of a conditionally approved NDA may be continued

provided that on or before March 27, 2000, the holder of the application has submitted: (i) A supplement for revised labeling necessary to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted; and (ii) a supplement to provide updated information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). FDA will evaluate the submitted material and, if the material is adequate, will grant full approval to the conditionally approved NDA.

(b) Approval of an ANDA must be obtained in accordance with section 505(j) of the act (21 U.S.C. 355(j)) before marketing such products. Marketing prior to approval of an ANDA will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: January 4, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–1787 Filed 1–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 3, 2000.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 6:00 PM in the Great Hall of the Northbridge Town Hall, located on Main Street in Whitinsville, MA for the following reasons:

1. Approval of Minutes
2. Presentation of FY2000 Development Budget
3. Senator John H. Chafee Heritage Award

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 00–1629 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group, Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: February 10, 2000, at 1:00 p.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A. 4 of the Memorandum of agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The agenda will include discussions about the draft Gulf Ecosystem Monitoring program.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 00–1751 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–RG–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. This objectives of this meeting are to hear technical reports, review the 1999 fishery season, and discuss and plan management of the 2000 season. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, February 23, 2000; from 8:00 a.m. to 5:00 p.m. on Thursday, February 24, 2000; and from 8:00 a.m. to 12:00 p.m. on Friday, February 25, 2000.

PLACE: The meeting will be held at the Best Western Beachfront Harbor, 16008 Boat Basin Rd., Harbor, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: January 14, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations.

[FR Doc. 00–1761 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–00–1430–BD; UTU–75494]

Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Order for temporary emergency closure of portions of the ''Moon

House'' route and ''Snow Flat Spring Cave'' route which were identified as ''ways'' within the Fish Creek Canyon Wilderness Study Area (WSA) during the wilderness inventory of these Public Lands in San Juan County, Utah, to all motorized and mechanical vehicles.

SUMMARY: This action temporarily closes to motorized and mechanical vehicular use portions of the Moon House and Snow Flat Spring Cave routes inventoried as ''ways'' within the Fish Creek Canyon WSA on public land administered by the Bureau of Land Management in San Juan County, Utah. Specifically that portion of the Moon House route to be closed is the way that begins at the southern boundary of Section 35 in T. 38 S., R. 19 E., SLBM and continues to the edge of McCloyd Canyon. Specifically the portion of the Snow Flat Spring Cave route to be closed is the way in Sections 1 and 12 of T. 39 S., R. 19 E., SLBM, that begins at the end of the cherry stemmed road approximately one-half mile from the Snow Flat Road (Mormon Trail). The way will be closed from that point to the edge of McCloyd Canyon. The routes have seen no authorized vehicular traffic in more than eight years because they had been closed with signs posted stating ''No Motor Vehicles.'' San Juan County officials recently removed these signs without authorization. Publicity surrounding the County's removal of the signs is anticipated to increase vehicular traffic substantially. There is imminent threat of considerable adverse effects to wilderness characteristics and cultural resources. A substantial increase in vehicle use of these routes would seriously degrade wilderness suitability and may constrain Congress from designating those portions of the WSA affected by the routes into the National Wilderness Preservation System. Increased vehicular use would also cause considerable adverse effects upon cultural resources through surface disturbance and removal of artifacts. This temporary emergency closure will take effect immediately. Authority for this temporary emergency closure order is contained in 43 CFR 8341.2. This temporary closure will remain in effect until permanent designation procedures are followed as identified in 43 CFR 8342.

FOR FURTHER INFORMATION CONTACT: Kent E. Walter, Field Office Manager, 435 North Main (P.O. Box 7), Monticello, Utah 84535, (435) 587–1500.

Dated: January 12, 2000.

Kent E. Walter,

Field Office Manager.

[FR Doc. 00–1764 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–2810–AF]

Notice of Intent to Prepare a Resource Management Plan (RMP) Amendment; Las Cruces Field Office, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an RMP amendment and invitation to participate in identification of issues and planning criteria.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces Field Office, New Mexico, is initiating the preparation of an RMP Amendment which will include an environmental assessment (EA). The Amendment would allow the implementation of the Fire Management Plan, Phase I. The Plan would guide Fire Management Policy and Practices on public land administered by the Las Cruces Field Office. These lands include approximately 5.9 million acres in Grant, Hidalgo, Luna, Sierra, Dona Ana, and Otero Counties in southwestern New Mexico. A map of this area is available at the Las Cruces Field Office. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria.

DATES: Comments relating to the identification of issues and planning criteria will be accepted until February 28, 2000.

ADDRESSES: Comments should be sent to: Helen Graham, Team Leader, Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Jim McCormick, Assistant Field Manager, Renewable Resources or Helen Graham, Team Leader, Las Cruces Field Office at (505) 525–4300.

SUPPLEMENTARY INFORMATION: The Fire Management Plan would amend the White Sands RMP and the Mimbres RMP.

Anticipated issues to be addressed in the development of the amendment include, but are not limited to, the following:

(1) The impact of smoke from wildfire and prescribed fire;

(2) The impact of wildfire, prescribed fire, and suppression activity on soil erosion and surface water quality;

(3) The impact of fire suppression activity on resource values;

(4) The impact of wildfire, prescribed fire, and suppression activity on wildlife, and special status species;

(5) The impact of wildfire, prescribed fire, and suppression activity on vegetation;

(6) The impact of wildfire, prescribed fire, and suppression activity on cultural resources;

(7) The proliferation of undesirable, non-native species due to fire and/or fire exclusion;

(8) The risks associated with hazardous fuel (grass, brush, etc.) accumulation in the vicinity of urban interface, sensitive features, and other improvements; These issues are not final and may be refined or expanded through active public input.

The RMP Amendment will be developed by an interdisciplinary team using representation from the Team Leader, Fire Management Specialist, Range Management Specialist, Wildlife Biologist(s), Archeologist, Soil Scientist, Hydrologist, Outdoor Recreation/ Wilderness Planner, and Writer-Editor. Additional technical support will be provided by other specialists as needed.

Public participation activities during the planning process will include consultation with cooperating agencies, mail outs, media notices, **Federal Register** notices, and public meetings.

Three public scoping meetings will be held to obtain public input regarding the RMP Amendment. The public scoping meeting will be held at the following times and locations:

Date	Time	Location
February 15, 2000	7:00–9:00 p.m	BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM.
February 16, 2000	7:00–9:00 p.m	Lordsburg Civic Center, 313 East Fourth St., Lordsburg, NM.
February 17, 2000	7:00–9:00 p.m	Otero County Courthouse, Commission Chambers, Room 253, 1000 New York Ave., Alamogordo, NM.

Complete records of the planning process will be available for public review at the BLM, Las Cruces Field Office at the address above.

Joseph B. Peterson,

Acting Field Manager, Las Cruces.

[FR Doc. 00–1763 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee (Committee), on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies. Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal departments. At this tenth meeting, the Committee will elect a Chairperson, Vice Chairperson, and Parliamentarian, and consider revised by-laws. The Phosphate, Trona and Leaseable Solid Minerals; Coal; Accounting Relief for Marginal Properties; and Freedom of Information Act Subcommittees will also present interim reports. The Minerals Management Service (MMS) will be prepared to discuss Royalty in Kind pilots, Royalty Management Program's reengineering overview and Operational Models, MMS's Strategic Plan for 2001–2005, and the April Award Ceremony.

DATES: The meeting will be held on Friday, February 4, 2000, 8:30 a.m. to 4:30 p.m. Central Standard time.

ADDRESSES: The meeting will be held at the Wyndham Greenspoint Hotel, 12400 Greenspoint Drive, Houston, Texas 77060, telephone number (713) 875–1652.

FOR FURTHER INFORMATION CONTACT: Mr. Gary L. Fields, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3062, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3781.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to Mr. Gary L. Fields, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: January 18, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–1747 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Salton Sea Restoration Project, Coachella and Imperial Counties, California, INT–DES–00–03

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Salton Sea Authority (SSA) have prepared a joint DEIS/DEIR for the Salton Sea Restoration Project (SSRP). The Salton Sea is an artificially maintained inland body of water located in the southeastern corner of California, southeast of Palm Springs, and spans Riverside and Imperial counties. Based on scientific, environmental, and feasibility studies conducted for the SSRP, five project alternatives were developed to address project goals. The DEIS/DEIR describes and presents the environmental effects of the five alternatives as well as the No Action Alternative. Public hearings will be held to receive written or verbal comments on the DEIS/DEIR from interested organizations and individuals on the environmental impacts of the proposal. A Notice of Public Hearing will be published at a later date with dates, times, and locations of the hearings.

DATES: A 90-day public review period commences with the publication of this notice. Submit written comments on the DEIS/DEIR on or before April 25, 2000.

ADDRESSES: Written comments on the DEIS/DEIR should be addressed to Mr. Tom Kirk, Director, Salton Sea Authority, 78–401 Highway 111, Suite T, La Quinta, CA 92253; or to Mr. William Steele, Program Manager, Salton Sea Project, Bureau of Reclamation, PO Box 61470, Boulder City, NV 89006–1470.

The document is available on the Internet at http:@@www.lc.usbr.gov. Copies of the DEIS/DEIR may be requested from Mr. Steele at the above address or by calling (702) 293–8129. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIS/DEIR are available for public inspection.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Kirk, SSA, at (760) 564–4888; or Mr. William Steele, Reclamation, at (702) 293–8129.

SUPPLEMENTARY INFORMATION: The SSRP was developed to comply with Public Laws 102–575 and 105–372 which direct the Secretary of the Interior to ''conduct a research project for the development of a method or combination of methods to reduce and control salinity, provide endangered species habitat, enhance fisheries, and protect recreational values * * * in the area of the Salton Sea'' as well as ''complete all studies, including, but not limited to environmental and other reviews, of the feasibility and benefit-cost of various options that permit the continued use of the Salton Sea as a

reservoir for irrigation drainage and (i) reduce and stabilize the overall salinity of the Salton Sea; (ii) stabilize the surface elevation of the Salton Sea; (iii) reclaim, in the long term, healthy fish and wildlife resources and their habitats; and (iv) enhance the potential for recreational uses and economic developments of the Salton Sea.'' The following five project goals were developed: (1) Maintain the Sea as a repository for agricultural drainage; (2) provide a safe, productive environment at the Sea for resident and migratory birds and endangered species; (3) restore recreational uses at the Sea; (4) maintain a viable sport fishery at the Sea; and (5) enhance the Sea to provide economic development opportunities. The DEIS/DEIR presents a No Action Alternative, five action alternatives, as well as a suite of common actions developed to enhance the action alternatives. The action alternatives are approached as each consisting of two phases: (i) ''short-term'' or Phase 1 of each action alternative is designed to reduce and stabilize salinity for at least 30 years; and (ii) Phase 2 or ''long-term'' actions designed to last no less than 70 to 100 years. Each alternative, including the No Action Alternative, is evaluated against three inflow scenarios: (1) current (present-day) inflow of 1.36 million acre-feet per year (maf/yr); (ii) a reduction of 300,000 acre-feet per year (af/yr) to 1.06 maf/yr; and (iii) a total inflow reduction of 536,000 af/yr to 0.8 maf/yr. Phase 1 action alternatives include: (1) construction of evaporation ponds that would concentrate salinity within their boundaries to reduce salinity in the Sea, and also could potentially serve as a displacement mechanism to control the Sea's elevation; (2) construction of an Enhanced Evaporation System (EES), a system that sprays a fine mist of water into the air to accelerate evaporation and create a saline precipitate; (3) a combination of an EES with an evaporation pond; or (4) an in-Sea EES within an evaporation pond. Phase 2 action alternatives involve supplementing inflows to the Sea, creating displacement structures for elevation control, and creating longer lasting export options.

Copies of the DEIS/DEIR are available for public inspection and review at the following locations:

- Salton Sea Authority, 78–035 Calle Estado, La Quinta, California 92253–2930; telephone: (760) 564–4888
- Bureau of Reclamation, Salton Sea Project Office, PO Box 61470, Boulder City, Nevada 89006–1470; telephone: (702) 293–8129
- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington, DC 20240; telephone: (202) 208–4662
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072
- Bureau of Reclamation, Public Affairs Office, PO Box 61470, Boulder City, Nevada 89006–1470; telephone: (702) 293–8420
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001, telephone: (202) 208–5815
- Sonny Bono Salton Sea National Wildlife Refuge, 906 West Sinclair Road, Calipatria, CA 92233, telephone: (760) 348–5278
- Coachella Valley Water District, Highway 111 and Avenue 52, Coachella, CA 92236, telephone: (760) 398–2651
- Imperial County Administrative Center, 940 West Main Street, Suite 208, El Centro, CA 92243–2875, telephone: (760) 339–4290
- Imperial Irrigation District, 333 East Barioni Boulevard, Imperial, CA 92251, telephone: (760) 339–9426
- Supervisor, District 4 (Supervisor Roy Wilson), 46–200 Oasis Street, Suite 318, Indio, CA 92201, telephone: (760) 863–8211
- Bombay Beach Community Services District, 9590 Avenue C, Niland, CA 92257, telephone: (760) 354–1209
- Salton Sea State Park, 100–225 State Park Road, North Shore, CA 92254, telephone: (760) 393–1338
- Riverside County (Supervisor Roy Wilson's Office), 4080 Lemon Street, 12th Floor, Riverside, CA 92502, telephone: (909) 955–1040
- Community Services District, 2098 Frontage Road, Salton City, CA 92275, telephone: (760) 394–4446
- San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–8050, telephone: (619) 594–6014
- San Diego Central Library, 820 East Street, San Diego, CA 92101–6478, telephone: (619) 236–5800
- Palm Springs Public Library, 300 South Sunrise Way, Palm Springs, CA 92262–7699, telephone: (619) 323–8298
- Clark County Library, 1401 E. Flamingo Road, Las Vegas, Nevada 89119, telephone: (702) 733–7810
- Yuma County Library District, 350 Third Avenue, Yuma, AZ 85364, telephone: (520) 782–1871
- The Burton Barr Central Library, 1221 North Central Avenue, Phoenix AZ 85004, telephone: (602) 262–4636
- Los Angeles Public Library, 630 West Fifth Street, Los Angeles, CA 90071–2097, telephone: (213) 228–7515
- University of Redlands, Armacost Library, 1249 E. Colton Avenue, Redlands, CA 92374–3758, telephone: (909) 335–4022
- University of California, Riverside, Riverside, CA 92517–5900, telephone: (909) 787–3221
- California State Polytechnic University, Pomona, 3801 West Temple Avenue, Pomona, CA 91768, telephone: (909) 869–3088
- University of California, Davis, 100 North West Quad, Davis, CA 95616–5292, telephone: (530) 752–2110

Dated: January 21, 2000.

William Steele,

Program Manager, Salton Sea Project, Bureau of Reclamation.

[FR Doc. 00–1843 Filed 1–25–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–421]

Certain enhanced dram devices containing embedded cache memory registers, components thereof, and products containing same; Notice of Commission determination not to review an initial determination terminating the investigation on the basis of a settlement agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 8) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-referenced investigation based on a complaint filed by Enhanced Memory Systems, Inc. (EMS) of Colorado

Springs, Colorado. The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain enhanced DRAM devices containing embedded cache memory registers, components thereof, or products containing them by reason of infringement of claims 26 or 27 of U.S. Letters Patent 5,721,962 or claims 2, 6, 17, 18, 27, 28, 29, 30, or 31 of U.S Letters Patent 5,887,272. NEC Corporation, NEC Electronics, Inc. and NEC USA Inc. (collectively, ''NEC'') were named as respondents.

On November 12, 1999, EMS and NEC filed a joint motion to terminate the investigation based on a settlement agreement. On November 22, 1999, the Commission investigative attorney filed a response in support of the joint motion to terminate. On December 20, 1999, the presiding ALJ granted the joint motion and issued an ID (Order No. 8) terminating the investigation on the basis of the settlement agreements. The ALJ found no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: January 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1831 Filed 1–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–426]

Certain Spiral Grilled Products Including Ducted Fans and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 26, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Vornado Air Circulation Systems, Inc. of Andover, Kansas. A supplementary letter was filed on January 7, 2000. On December 28, 1999, the Commission voted to extend the deadline by which it had to decide whether to institute an investigation based on the complaint. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of (i) infringement of claims 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of U.S. Letters Patent Re. 34,551, and (ii) misappropriation of trade dress. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1999).

SCOPE OF INVESTIGATION

Having considered the complaint, the U.S. International Trade Commission, on January 18, 2000 Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of infringement of claims 15, 16, 17, 18, 19, 20, 21, 22, 23, or 24 of U.S. Letters Patent Re. 34,551.

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(c) whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Vornado Air Circulation Systems, Inc., 415 E. 13th, Andover, Kansas 67002.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Holmes Products Corp., 233 Fortune Blvd., Milford, MA 01757–1740

Holmes Products (Far East) Ltd., 9th Floor, No. 9 Wing Hong St., Cheung Sha Wan, Kowloon, Hong Kong

Holmes Products (Far East) Ltd., Taiwan Branch (Bahamas), 13F–2, 97 Chung Hsin Road, Section 4

Sanchung City, Taipei, Hsien, Taiwan

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in

accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: January 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1830 Filed 1–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review)]

Steel Rails From Canada

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty and antidumping duty orders on steel rails from Canada would 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 June 1, 1999 (64 FR 29353, June 1, 1999) and determined on September 3, 1999 that it would conduct expedited reviews (64 FR 50108, September 15, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 24, 2000. The views of the Commission are contained in USITC Publication 3269 (January 2000), entitled Steel Rails from Canada: Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review).

By order of the Commission.

Issued: January 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1858 Filed 1–25–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 12, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date or this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Survey of Physicians Board Certified in Internet Medicine with a Sub-Speciality in Pulmonary Medicine, Pulmonary Clinics and Facilities.

OMB Number: 1215–ONEW.

Frequency: 1 Time.

Affected Public: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Number of Respondents: 2,000.

Total Burden Hours: 333 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: DCMWC will mail surveys to 2,000 specified physicians, clinics and facilities and utilize the results in determining whether to implement changes to the medical testing component of its program. The Department would like to ascertain the extent to which physicians, clinics and facilities, use spirometers that are capable of producing a flow-volume loop. In addition, the Department seeks information on the fees necessary to attract highly qualified physicians to perform the medical testing and evaluation that the Department is required to provide under the Black Lung Benefits Act. The information obtained from this survey will assist the Department in administering the program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–1781 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on

Construction Safety and Health (ACCSH) will meet on February 17, 2000, at the Holiday Inn O'Hare International, 5440 North River Road, Rosemont, IL. This meeting is open to the public.

TIMES, DATES, ROOMS: ACCSH will meet from 8 a.m. to Noon, Thursday, February 17. ACCSH work groups will meet from 8 a.m. to 5 p.m., Monday, February 14.

SUPPLEMENTARY INFORMATION: For further information contact Veneta Chatmon, Office of Public Affairs, Room N–3647, telephone (202) 693–1999, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals needing special accommodation should contact Veneta Chatmon no later than February 1, 2000, at the above address.

ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The agenda items include:

- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration Charles N. Jeffress.
- ACCSH Work Group Updates, including:
- Musculoskeletal Disorders,
- Fall Protection,
- Sanitation,
- Process Safety Management.
- Open Forum—Public questions, complaints and compliments are welcome.

The following ACCSH Work Groups are scheduled to meet at the Holiday Inn O'Hare International on Monday, February 14:

- Fall Protection—8–10 a.m.
- Multi-employer citation policy—10:15 a.m.–12:15 p.m.
- Sanitation—1–3 p.m.
- Musculoskeletal Disorders—3:15–5:15 p.m.

The Training Work Group is scheduled to meet on Wednesday, February 16 at the OSHA Training Institute, 1555 Times Drive, Des Plaines, IL.

Other workgroups may meet after adjournment of the ACCSH meeting on Thursday, February 17, 2000.

For further information on ACCSH activities and scheduling please refer to the OSHA Web site at *http://www.osha.gov* or call Jim Boom in OSHA's Directorate of Construction at (202) 693–1839.

Interested persons may submit written data, views or comments, preferably with 20 copies, to Veneta Chatmon, at the address above. Submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Signed at Washington, DC this 19th day of January, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–1780 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 90–1

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection requests (ICR) incorporated in Prohibited Transaction Class Exemption 90–1, involving insurance company pooled separate accounts. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions involving insurance company pooled separate accounts in which employee benefit plans participate and which are otherwise prohibited by ERISA. Specifically, the exemption allows persons who are parties in interest of a plan that invests in a pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that certain conditions are met, the Department requires that records regarding the exempted transaction be maintained for six years.

II. Desired Focus of Comments

The Department is particularly interested in comments which

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Action

This exemption provides individuals or entities which are parties in interest to a plan that invests in an insurance company pooled separate account with the ability to engage in transactions with the separate account and to avoid potential hardships and possible fiduciary liability under ERISA. For the Department to grant an exemption, however, plan participants and beneficiaries must be protected. The Department therefore included certain exemption conditions, one of which requires that records of a transaction

between the party in interest to a plan and the insurance company pooled separate account be kept by the insurance company for six years from the date of the transaction. The majority of this recordkeeping is considered to be usual business practice in the insurance industry. Without this ICR, the Department would be unable to effectively enforce the terms of the exemption, insure user compliance, and protect the interests of participants and beneficiaries.

Type of Review: Extension of currently approved collections of information.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 90–1—Pooled Separate Accounts.

OMB Number: 1210–0083.

Recordkeeping: Six years.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 128.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 11 hours.

This notice requests comments on the extension of the ICR included in Prohibited Transaction Class Exemption 90–1. The Department is not proposing or implementing changes to the existing ICR at this time. Comments received in response to this notice will be summarized and/or incorporated in the submission to OMB for continued clearance of the ICR; they will also become a matter of public record.

Dated: January 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–1782 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 94–20

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, report burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection requests (ICR) incorporated in Prohibited Transaction Class Exemption 94–20, Purchases and Sales of Foreign Currencies. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof that is a party in interest with respect to such plan. In the absence of this exemption, certain aspects of these transactions could be prohibited by section 406(a) of the Employee Retirement Security Act of 1974 (the Act).

II. Desired Focus of Comments

The Department is particularly interested in comments which—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Action

This existing collection of information should be continued because without the relief provided by this exemption, foreign exchange transactions between a bank or an affiliate thereof and an employee benefit plan with respect to which the bank or an affiliate is a trustee, custodian, fiduciary, or other party in interest would violate certain provisions of the Act. Specifically, individuals or entities which are parties in interest with respect to a plan would not be permitted to engage in a purchase or sale of foreign currencies between the bank, broker-dealer, or a affiliate thereof and an employee benefit plan, thus creating a potential hardship to those affected. The exemption has one basic information collection condition—the bank or broker-dealer or affiliates thereof are required to maintain within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, records of the foreign exchange transaction. Without such records, the Department would be unable to effectively enforce the terms of the exemption, insure user compliance, and protect the interests of employee benefit plan participants and beneficiaries.

Type of Review: Extension of currently approved collections of information.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 94–20, Purchases and Sales of Foreign Currencies.

OMB Number: 1210–0085.

Recordkeeping: Six years.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 35.

Average Time per Response: 5 minutes.

Total Responses: 175.

Estimated Total Burden Hours: 15.

This notice requests comments on the extension of the ICR included in Prohibited Transaction Class Exemption 94–20. The Department is not proposing or implementing changes to the existing ICR at this time. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the

information collection request; they will also become a matter of public record.

Dated: January 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 00–1783 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Revision of Information Collection; Comment Request; Prohibited Transaction Exemptions 76–1 and 77–10

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Pension and Welfare Benefits Administration is soliciting comments concerning revision of two currently approved information collection requests (ICRs), Prohibited Transaction Class Exemption 76–1, OMB Number 1210–0058, and Prohibited Transaction Class Exemption 77–10, OMB Number 1210–0081. The Department proposes to revise the ICR currently approved under OMB Number 1210–0058 by incorporating the information collection provisions of Prohibited Transaction Class Exemption 77–10 into OMB Number 1210–0058, and allowing OMB Number 1210–0081 to expire on April 30, 2000. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before March 27, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 76–1 permits parties in interest, under specified conditions, to (A) make delinquent employer contributions; (B) receive loans; (C) and, obtain office space, administrative services and goods from plans. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act).

Under Part C of Prohibited Transaction Class Exemption 76–1, a multiple employer plan may provide administrative services or goods to a participating employer, a union, or another plan which is a party in interest. Under section 406(b)(2) of the Act, however, fiduciaries are prohibited from involving an employee benefit plan on behalf of a party (or representing a party) whose interests are adverse to the interests of a plan or to the interests of its participants or beneficiaries. Therefore, transactions between parties in interest involving administrative goods and services, exempt under the terms of Prohibited Transaction Class Exemption 76–1, might still be prohibited under section 406(b)(2) in the absence of a separate exemption. Prohibited Transaction Class Exemption 77–10, authorizes a multiple employer plan to provide the goods and services described in Part C if certain conditions are met and provides relief from the provisions of section 406(b)(2).

II. Desired Focus of Comments

The Department is particularly interested in comments which

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Actions

Because Prohibited Transaction Class Exemption 77–10 (OMB Number 1210–0081) complements Prohibited Transaction Class Exemption 76–1 (OMB Number 1210–0058), the Department proposes to combine the information collection provisions of both under one OMB control number (OMB Number 1210–0058). The Department believes the public will benefit by having the opportunity to comment on the information collection provisions at the same time because Prohibited Transaction Class Exemption 77–10 is not likely to be used without its counterpart Prohibited Transaction Class Exemptions 76–1, Part C, and because the paperwork burden for both exemptions is essentially a single burden. After the information collection provisions of Prohibited Transaction Class Exemption 77–10 are incorporated in the revised ICR under 1210–0058, the Department intends to allow the control number for Prohibited Transaction Class Exemption 77–10 to expire.

The existing collection of information under Prohibited Transaction Class Exemptions 76–1 and 77–10 should be continued because without the relief provided by these exemptions: contributing employers would not be able to make late or partial payments to plans, even in justifiable circumstances; contributing employers would be unable to obtain construction financing from plans and the plans would be denied this investment opportunity; and plans would not be able to receive income from leasing available office space or providing services to certain parties in interest.

The recordkeeping requirements incorporated within Prohibited Transaction Class Exemption 76–1 are intended to protect the interest of plan participants and beneficiaries. Each part of the exemption differs somewhat in paperwork. Under Part A, the terms of an arrangement or agreement between a plan and a participating employer extending time for a contributing or accepting less than the amount owed must be set forth in writing. Also, a determination by a plan to consider an unpaid employer contributing as uncollectible must be set forth in writing. Under Part B, before a construction loan is made by a plan to a participating employer, the employer and the plan must receive a written commitment for permanent financing from a person other than the plan concerning full repayment of the loan upon completion of construction. In

addition, the plan must maintain for six years such records as are necessary to enable the Department, Internal Revenue Service (IRS), plan participants, beneficiaries, participating employers, and others to determine whether the conditions of the exemptions have been met. Part C permits plans to lease office space and provide administrative services or sell goods to a participating employer or union or to another plan. Under Part C, the plan must maintain for six years following the date of termination of the lease or of the provision of services such records as are necessary to enable persons from the Department, IRS, and other related parties to determine whether the conditions of the exemption have been met.

Information collection under Prohibited Transaction Class Exemption 77–10 requires that a multiple employer plan which shares office space, administrative services, or goods or which provides administrative services or goods (as under Part C of Prohibited Transaction Exemption 76–1), maintain, during the time of the transactions and six years from the time of termination, such records as are necessary to enable the Department, IRS, and other related parties to determine whether the conditions of the exemption have been met. The recordkeeping requirements are intended to protect the interests of plan participants and beneficiaries and are essentially the same recordkeeping requirements as under Part C of Prohibited Transaction Class Exemption 76–1.

Type of Review: Revision of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration.

Titles: Prohibited Transaction Class Exemptions 76–1 and 77–10.

OMB Number: 1210–0058.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 3,000.

Frequency of Response: On occasion.

Responses: 3,000.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 750.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: January 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–1784 Filed 1–25–00; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit 3; Notice of Consideration of Approval of Transfer of Facility; Operating License and Conforming Amendment, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (64 FR 2990). This action is necessary to correct the comment period expiration dates.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

1. On page 2991, in the second column, the first complete paragraph, in the first line, February 7, 2000, is corrected to read February 8, 2000.

2. On page 2991, in the third column, the first complete paragraph, in the third line, February 17, 2000, is corrected to read February 18, 2000.

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–1811 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (64 FR 2991). This action is necessary to correct the comment period expiration date.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

On page 2992, in the third column, the third complete paragraph, in the first line, February 17, 2000, is corrected to read February 18, 2000.

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–1809 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (64 FR 2993). This

action is necessary to correct the comment period expiration date.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 2994, in the second column, the fifth complete paragraph, in the first line, February 17, 2000, is corrected to read February 18, 2000.

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–1810 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License DPR–43 Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License DPR–43 issued to Wisconsin Public Service Corporation (the licensee) for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would change Technical Specification (TS) Section 4.2.b, ''Steam Generator Tubes,'' to extend the use of the length-based pressure boundary definition (L criterion) for the Westinghouse steam generator hybrid expansion joint sleeved tubes through the operating cycle 24 (approximately from May 2000 to Fall of 2001). The existing TS 4.2.b.4.c restricts use of L criterion to operating cycle 23 which is scheduled to end in mid-April 2000.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation of the facility with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The extension of the L criterion for cycle 24 does not change the results of the structural testing performed in 1998. The physical characteristic (undegraded hardroll length) of the pressure boundary definition also does not change. The L criterion will continue to be implemented as described in the original, approved amendment. The conservatisms upon which NRC approval was based still exist. Therefore, the conservatisms still provide assurance that safety margins will continue to be met and uncertainties will remain acceptably low. Extending the use of the L criterion does not increase the probability of a MSLB [main steam line break] event. Based on the above, it may be concluded that application of the parent tube pressure boundary L criterion through cycle 24 will not result in a significant increase in the probability of an accident previously evaluated.

The conservatively bounding primary-to-secondary MSLB leak rate of 1 gpm [gallons-per-minute], which was approved for cycle 23, will continue to be applied to the calculation for postulated MSLB leakage for cycle 24. Application of this leak rate to the postulated leakage calculation will continue to ensure primary-to-secondary leakage will not exceed the current maximum allowable during a MSLB event. Maintenance of the current maximum allowable primary-to-secondary leak rate during a MSLB event ensures off-site doses will not exceed a small fraction of 10 CFR 100 and control room doses will not exceed GDC [General Design Criteria] -19 criteria. Therefore, it may be concluded that the application of the parent tube pressure boundary L criterion through cycle 24 will not increase the consequences of an accident previously evaluated.

2. Does operation of the facility with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The extension of the L criterion through cycle 24 will not introduce a change to the design basis or operation of the plant. Neither the physical characteristics nor implementation of the L criterion has been changed. As determined in the original L criterion submittal, the continued implementation of a parent tube pressure boundary does not effect or interact with other portions of the reactor coolant system. Continued implementation of the L criterion does not effect any other tubes outside the repaired area or any other components. The qualification testing performed in 1998 remains valid and supports the conclusion that the joint retains structural integrity consistent with RG [Regulatory Guide]—1.121 and leakage integrity with regards to 10 CFR [Code of Federal Regulations] 100 and GDC–19. Any hypothetical accident as a result of PTIs [parent tube indications] left in service by the L criterion continues to be bounded by the existing tube rupture analysis. Therefore, application of the L criterion through cycle 24 will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does operation of the facility with the proposed amendment involve a significant reduction in a margin of safety?

The safety factors used to establish the L criterion continue to be consistent with safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in the SG [steam generator] design. Based on the sleeve-to-tube geometry, it is unrealistic to consider that application of L criterion could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The performance characteristics of postulated degraded HEJ [hybrid expansion joint] sleeves have been verified through testing to retain structural integrity and preclude significant leakage during both normal operating and MSLB conditions. Conservatisms that allowed approval of the L criterion for cycle 23 still exist and apply as discussed in the safety evaluation of this submittal. Leakage rates determined and approved for the original L criterion submittal will continue to be implemented. Therefore, there is not a significant reduction in the margin of safety for extension of the L criterion through cycle 24.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the

amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 25, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 22, 1999, as supplemented January 17, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 20th day of January 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1812 Filed 1–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 31, 1999, through January 14, 2000. The last biweekly notice was published on January 12, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration of Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 25, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: December 17, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification 2.1.1.2 to incorporate cycle-specific safety limit minimum critical power ratios (SLMCPRs) for the core that will be loaded during the upcoming refueling outage

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment establishes a revised SLMCPR value of 1.07 for two recirculation loop operation and 1.09 for single recirculation loop operation. The derivation of the cycle-specific SLMCPRs was performed using NRC approved methods and uncertainties described in Amendment Number 25 to NEDE–24011–P–A (GESTAR II) and Licensing Topical Reports NEDC–32601P–A, ''Methodology and Uncertainties for Safety Limit MCPR Evaluations'' and NEDC–32694P–A, ''Power Distribution Uncertainties for Safety Limit MCPR Evaluation.''

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable.

The probability of an evaluated accident is not increased by revising the SLMCPR values. The change does not require any physical plant modifications or physically affect any plant components. Therefore, no individual precursors of an accident are affected.

The proposed license amendment establishes a revised SLMCPR that ensures that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences. Specifically, the reload analysis demonstrates that a SLMCPR value of 1.07 (1.09 for single loop operation) ensures that less than 0.1 percent of the fuel rods will experience boiling transition during any plant operation if the limit is not violated.

Based on (1) the determination of the new SLMCPR values using NRC approved methods and uncertainties, and (2) the operability of plant systems designed to mitigate the consequences of accidents not having been changed; the consequences of an accident previously evaluated have not been increased.

Therefore, the proposed Technical Specification change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment involves a revision of the SLMCPR from 1.11 to 1.07 for two recirculation loop operation and from 1.13 to 1.09 for single loop operation based on the results of analysis of the Cycle 8 core which will once again be fully loaded with GE11 fuel. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed license amendment establishes a revised SLMCPR value of 1.07 for two recirculation loop operation and 1.09 for single recirculation loop operation. The derivation of these revised SLMCPRs was performed using NRC approved methods and uncertainties described in Amendment Number 25 to NEDE–24011–P–A (GESTAR II) and Licensing Topical Reports NEDC–32601P–A, ''Methodology and Uncertainties for Safety Limit MCPR Evaluations'' and NEDC–32694P–A, ''Power Distribution Uncertainties for Safety Limit MCPR Evaluation.'' Use of these methods ensures that the resulting SLMCPR satisfies the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limit is not violated. Based on the assurance that the fuel design safety criteria will be met, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: December 17, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement (SR) 3.6.1.3.9 to relax the SR frequency by allowing a representative sample of excess flow check valves (EFCVs) to be tested every 18 months, such that each EFCV will be tested at least once every 10 years. Current SR 3.6.1.3.9 requires all EFCVs to be tested every 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current SR frequency requires each reactor instrumentation line EFCV to be tested every 18 months. The EFCVs at Fermi 2 are designed to close automatically in the event of a line break downstream of the valve. Indicating lights on a control room panel monitor EFCV positions. These valves may be reopened by actuation of a solenoid valve, which is operated from a local control panel. EFCVs at Fermi 2 are designed and installed following the guidance of Regulatory Guide 1.11. This proposed change allows a reduced number of EFCVs to be tested every 18 months. Industry operating experience, documented in BWROG [Boiling Water Reactor Owners Group] Report B21–00658–01, concludes that a change in surveillance test frequency has a minimal impact on the reliability for these valves. A failure of an EFCV to isolate cannot initiate previously evaluated accidents; therefore, there can be no increase in the probability of occurrence of an accident as a result of this proposed change.

Fermi 2 UFSAR [Updated Final Safety Analysis Report], Subsection 15.6.2 evaluates an instrument line pipe break within secondary containment. The evaluation assumes that a small instrument line instantaneously and circumferentially breaks at a location where it may not be possible to isolate it and where immediate detection is not automatic or apparent. The evaluation concluded that pressurization of the secondary containment would not result from an instrument line break and a failure of the associated EFCV to isolate the ruptured line. The standby gas treatment system is not impaired by this event, and the calculated offsite exposure is substantially below the guidelines of 10 CFR 100. Additionally, coolant lost from such a break is inconsequential when compared to the makeup capabilities of the feedwater or RCIC [reactor core isolation cooling] system. The BWROG report concludes that the risk to the public with the extended testing interval is several orders of magnitudes below the general public annual exposure limits in 10 CFR 20.105.

Although not expected to occur as a result of this change, the postulated failure of an EFCV to isolate as a result of reduced testing is bounded by the analysis in the UFSAR. Therefore, there is no increase in the previously evaluated consequences of the rupture of an instrument line and there is no potential increase in the radiological consequences of an accident previously evaluated as a result of this change.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change allows a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. Industry operating experience as documented in the BWROG report provides supporting evidence that the reduced testing frequency will not affect the high reliability of these valves. The potential failure of an EFCV to isolate as a result of the proposed reduction in test frequency is bounded by the evaluation of an instrument line pipe break described in Subsection 15.6.2 of the UFSAR. This change is not a physical alteration of the plant and will not alter the operation of the structures, systems and components as described in the UFSAR. Therefore, a new or different kind of accident will not be created.

3. The change does not involve a significant reduction in the margin of safety.

The consequences of a postulated instrument line pipe break have been evaluated in Subsection 15.6.2 of the UFSAR. The evaluation assumed the line instantaneously and circumferentially breaks at a location where it may not be possible to isolate it and that the EFCV fails to isolate the break. Therefore, any potential failure of an EFCV as a result of the reduced testing frequency is bounded by this evaluation and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 18, 1999.

Description of amendment request: The proposed change would amend Technical Specification 3.5.3 and its associated Bases to reflect a change in the reactor coolant system (RCS) low pressure setpoint for Arkansas Nuclear One, Unit 1 (ANO–1). The RCS low pressure setpoint has been adjusted in the conservative direction to account for both the uncertainties associated with the actual value and the current number of plugged steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change to raise the current technical specification (TS) ESAS [Engineered Safeguards Actuation Signal] setpoint for low RCS pressure does not require new hardware or physical equipment modifications to the plant design. By raising the setpoint, a more prompt actuation of associated safeguards equipment will be achieved for the accident scenarios previously analyzed in the ANO–1 Safety Analyses Report (SAR). A more expeditious actuation will ensure a more timely response to the accident and serve to potentially decrease the consequences of an accident. The RCS Pressure LO LO [Low Low] alarm setpoint has also been raised and applicable procedures revised to provide the operator sufficient time to bypass the actuation during controlled plant maneuvers.

Therefore, the raising of the low RCS pressure ESAS setpoint from 1526 psig [pounds per square inch, guage] to 1585 psig does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change is relevant to accident response and mitigation and has no [a]ffect on accident initiation. An inadvertent actuation of the HPI [high pressure injection] system could result in pressurizing the RCS to the point where a pressurizer safety valve could open and subsequently fail to close, resulting in a loss of coolant accident.

However, this event remains unaffected for normal power operations and requires discussion of depressurization events only, such as a planned cooldown, when an inadvertent actuation could occur earlier due to the proposed higher setpoint. This concern is mitigated by the increase of the RCS Pressure LO LO alarm setpoint from approximately 1550 psig to 1640 psig, thus providing the operator ample time to bypass the low RCS pressure ESAS setpoint prior to inadvertent actuation. Therefore, no new, previously unevaluated event has been introduced relating to the inadvertent actuation of HPI components due to the proposed change.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change conservatively raises the existing low RCS pressure ESAS setpoint to a new value using existing installed equipment. The new value provides protection for the entire spectrum of break sizes based on applicable evaluations and considers the effects of projected steam generator tube plugging activities. The setpoint is also sufficiently below normal operating pressure to aid in preventing spurious initiation.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does *not* involve a significant hazards consideration.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas

Date of amendment request: November 16, 1999.

Description of amendment request: The proposed changes to the Arkansas Nuclear One, Units 1 and 2 (ANO–1 and ANO–2), Technical Specifications (TSs) and associated Bases would provide a 30-day allowable outage time (AOT) for Startup Transformer No. 2 (SU#2) which is an offsite power source shared by both units. This 30-day AOT would be used infrequently for the purpose of performing preventative maintenance on the transformer to increase its reliability. The current TS constraints would require both units to be in cold shutdown in order to perform this maintenance. In addition, changes have been requested to the requirements associated with demonstrating the operability of the emergency diesel generators to increase the reliability of this power supply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed changes has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Based on existing methodologies, guidance, and procedures utilized at ANO, including required assessments of risk associated with any significant maintenance activity, the provision of a 30-day AOT for preplanned preventative maintenance on SU#2 is acceptable. The resulting increase in overall risk was considered to fall into NRC Risk Region III (''Very Small Change''). Additionally, removal of SU#2 from service in any plant mode of operation has been previously evaluated and found acceptable given the existing guidance and regulations associated with offsite power sources.

Five offsite power feeds are available to the ANO switchyard with no more than two of the feeds in close proximity to one another for a given length, except within the switchyard itself. Failure of one feed, regardless of the cause, will result in no more than one additional failure, leaving at least three offsite power sources yet available, assuming the failure remains outside the ANO switchyard. For events that pose a threat within the ANO switchyard, four redundant Class 1E EDGs [emergency diesel generators] and one Alternate AC [alternating current] diesel generator are capable of supply power to the units. Upon loss of the remaining offsite power transformer of a unit which may be off-line, offsite power may be restored via backfeed operations from the Main Transformers to the Unit Auxiliary transformer to supply in-house loads. This ensures the availability of redundant power sources, including the applicable contingencies established during safety-related equipment maintenance performed at ANO, are sufficient in maintaining safe unit operations during preplanned preventative maintenance on SU#2 transformer. Therefore, providing a 30-day AOT for preplanned preventative maintenance on SU#2, not to be applied more than once in any 10-year period, does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

The elimination of excessive EDG operability demonstrations (cold starts) during periods when another required power source is inoperable acts to enhance overall EDG reliability and is consistent with guidance provided in NRC Generic Letter 84–15 ''Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability'' and the Revised Standard Technical Specifications (NUREG–1430 and –1432). Verification of the operability of the remaining EDG will be performed within 24 hours should the failure mechanism that caused the inoperability of the redundant EDG be concluded to be a common cause type failure. The start test in the latter case acts to ensure that an EDG source remains available when the cause of the failure of the redundant EDG might impact the remaining EDG.

Therefore, eliminating excessive EDG cold starts does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The removal of SU#2 from service to support needed maintenance activities has been previously evaluated for all modes of plant operation. Extending the current AOT to 30 days on a limited basis does not result in any new accident initiator. The EDGs are not considered accident initiators, but are designed to support mitigation of accident scenarios. The elimination of excessive EDG cold starts acts to enhance overall EDG reliability and has no effect on accident development.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The associated probabilistic risk assessments indicate that the proposed 30-day AOT for SU#2 does not involve a significant increase in overall site risk, nor reduce the margin to safety. Thorough contingency action planning, which acts to maintain the operability of other equipment important to safety during the SU#2 maintenance window, additionally acts to ensure the margin to safety is maintained. The EDGs are important to safety in that they are designed to supply power to safety system components and equipment during a loss of offsite power. The elimination of excessive cold starts of the EDGs acts to enhance the overall reliability of the EDGs and, therefore, proper mitigation of accident scenarios is likewise enhanced.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does *not* involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1999.

Description of amendment request: The proposed license amendment request would revise Fuel Handling Accident (FHA) dose calculations for 3 scenarios documented in the River Bend Station, Unit 1 (RBS), Updated Safety Analysis Report (USAR). The first is a FHA in the fuel building, assumed to occur 24 hours post-shutdown. A second FHA analysis was prepared to support Amendment 35 to RBS Technical Specifications (TS) which assumed a FHA occurs in the primary containment 80 hours post-shutdown during Local Leakage Rate Testing (LLRT). A third analysis was prepared in support of Amendment 85 to the RBS TS which assumed the containment is open at 11 days.

These analyses are being updated to account for several changes. The primary reason for the revisions, as stated by the licensee, was to update the analyses to reflect current RBS operating strategies and make the analyses consistent with each other. Specifically, Cases 1 and 2 of the three analyses assumed a Radial Peaking Factor (RPF) of 1.5 consistent with Regulatory Guide (RG) 1.25. However, current core design strategies could lead to an RPF as high as 1.65. In addition, to account for the potential impact of extended burnup fuel in future operating cycles, an increased iodine-131 gap fraction of 0.12 was more conservatively assumed in lieu of the 0.10 recommended by RG 1.25. The revised analysis also includes a change to the control room atmospheric dispersion factors (χ/Q) for the Main Control Room (MCR) ventilation system. Credit is taken for Standard Review Plan (SRP) Section 6.4 guidance for manual dual control room air intakes in that the χ/Q's are divided by 4. The revised FHA analyses also credit this action at a 20 minute delay to be consistent with the Loss of Coolant Accident (LOCA) analysis.

Furthermore, an error was discovered in one of the FHA calculations. The release rate assumed in the analysis did not ensure that the RG 1.25 assumption of a 2-hour release was preserved. The error is the result of an inherent bias in the secondary mixing effects in the dose calculation. The results continue to be bounded by the guidance contained in SRP 15.7.4 and RG 1.25.

Reanalysis showed that the release rate error, compounded with the other changes discussed above, resulted in calculated doses greater than those currently found in the RBS USAR. In addition, some of the doses were also greater than those presented in the Amendment 85 submittal. However, the licensee has stated that the results of the revised analyses remain ''well within'' 10 CFR 100, the guidance contained in SRP 15.7.4, and RG 1.25. Since the analyses results are above those reported in the RBS USAR, the criterion of 10 CFR 50.59(a)(2)(i) is, therefore, satisfied. Accordingly, the licensee has concluded that these changes involve an unreviewed safety question.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The analyses changes described by this proposed change to the USAR are not initiators to events, and, therefore, do not involve the probability of an accident. The changes to the FHA calculations for radiological doses following a FHA reflect the current operating strategies and make the analyses consistent. These changes included:

- accounting for the impact of extended burnup fuel,
- addressing a change to the control room atmospheric dispersion factors assumed in the analysis, and
- revising the Radial Peaking Factor (RPF) used in the analysis. Current core design strategies could lead to a RPF higher [than] that assumed in Regulatory Guide 1.25.

The TRANSACT code is used for offsite dose and control room dose calculations. The TRANSACT code is derived from the TACT V code documented in NUREG/CR–5109. RBS has benchmarked the TRANSACT code as discussed in the request dated August 17, 1995, (RBG–41728) which resulted in the NRC granting Amendment 85.

The revisions to the FHA are used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions include:

- initial fuel movement in the Fuel Building 24 hours after shutdown,
- fuel movement in Primary Containment after 80 hours with leakrate testing being conducted, and
- fuel movement in Primary Containment with the Primary Containment open.

Because the analyses affected by the changes are not considered an initiator to any previously analyzed accident, these changes cannot increase the probability of any previously evaluated accident. Therefore, this change does not increase the probability of occurrence of an accident evaluated previously in the safety analysis report (SAR).

This proposed change to the USAR does increase the consequences of an accident, but the increase is within all regulatory limits and guidance. While the calculated off-site and control room doses of a FHA did increase, the dose consequences remain below the regulatory limits of 10 CFR 100 and 10 CFR 50, Appendix A, GDC [General Design Criterion]–19 as approved per NUREG–0989, and the guidance contained in SRP 15.7.4 of less than 25% of the 10 CFR 100 limits. The cause of these events remains the failure of the fuel assembly lifting mechanism. These analyses demonstrated that for the worst case bundle drop, the regulatory dose guidelines of SRP 15.7.4 continue to be satisfied for the required decay periods.

This change accounts for the potential effects of current fuel design and operating strategies including increased burnup of fuel, increased iodine-131 fraction released, Main Control Room ventilation system operation, and release rate timing assumptions. Reanalysis of the off-site dose calculation demonstrates that the revised doses are increased but remain less than the regulatory limits of 10 CFR 100 and within the guidance of SRP 15.7.4. Therefore, this change does not significantly increase the consequences of an accident previously evaluated in the SAR.

The proposed changes, in conjunction with existing administrative controls, bound the conditions of the current design basis fuel handling accident analysis. The analysis also concludes the limiting offsite radiological consequences are well within the acceptance criteria of NUREG[–]0800, Section 15.7.4 and 10 CFR 50, Appendix A, GDC[–]19. The analysis is also conducted in a conservative manner containing margins in the calculation of mechanical analysis, iodine inventory, and iodine decontamination factor. Each of these conservatisms will further decrease the consequences. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

This change does not involve initiators to any events in the SAR, nor does the activity create the possibility for any new accidents. Rather, this change is a result of the evaluation of the most limiting FHA, which can occur at River Bend.

The proposed changes to the dose analyses are consistent with previous limits, only revising previous evaluations to account for current operating strategies and assumptions. These changes included:

• accounting for the impact of extended burnup fuel,

• addressing a change to the control room atmospheric dispersion factors assumed in the analysis, and

• revising the Radial Peaking Factor (RPF) used in the analysis. Current core design strategies could lead to a RPF higher [than] that assumed in Regulatory Guide 1.25.

The radiological consequences remain within accepted limits of 10 CFR 100 and guidance of the Standard Review Plan (NUREG–0800) Section 15.7.4. Therefore, these changes are consistent with the design basis analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The dose consequences are calculated in accordance with regulatory guidance found in Regulatory Guide 1.25 and the SRP [S]ection 15.7.4. The RBS analyses conservatively assumed that failures are consistent with those in the standard General Electric GESTAR II. These analyses result in a bounding number of fuel failures. The RBS analyses are also consistent with those approved by the NRC [Nuclear Regulatory Commission] in support of Technical Specification Amendments 35 and 85 to the River Bend Station license (NPF–47). The radiological dose consequences resulting from these failures are therefore analyzed using accepted methods and criteria. In addition, the analyses contain known conservatisms and margins to ensure the results will remain bounding.

The revised limits are used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the current regulatory limits and guidance. Safety margins and analytical conservatisms have been evaluated and are well understood. Conservative methods of analysis are maintained through the use of accepted methodology and benchmarking the proposed methods to previous analysis. Margins are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed change only eliminates some excess conservatism from the analysis.

In addition, EOI [Entergy Operations, Inc.] has implemented NUMARC [Nuclear Management and Resources Council (now NEI)] 91–06 guidelines for shutdown operations at RBS. Shutdown Operations Protection Plan and Primary-Secondary Containment Integrity procedures presently include guidance for closure of the containment hatch and other significant openings in containment, in addition to the requirements contained in the license and design basis. This additional protection will enhance the ability to limit offsite effects.

Acceptance limits for the fuel handling accident are provided in 10 CFR 100 with additional guidance provided in NUREG[–]0800, Section 15.7.4. The proposed changes continue to ensure that the whole-body and thyroid doses at the exclusion area and low population zone boundaries, as well as control room doses, are below the corresponding regulatory limits. These margins are unchanged, therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The commission has provided guidance concerning the application of the standards of 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986) of amendments that are not considered likely to involve a significant hazards consideration. This proposed amendment is very similar to example (vi):

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

As we have shown in the preceding discussion, this refinement to the FHA dose calculation results in a small increase to the consequences of a previously analyzed accident, but the results of the change remain clearly within the guidelines of 10 CFR 100, Appendix A, GDC[–]19, and the guidance of SRP [S]ection 15.7.4, without reducing a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 20, 1999.

Description of amendment request: The proposed amendment would change River Bend Station (RBS) Technical Specification (TS) 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' to allow the Inclined Fuel Transfer System (IFTS) primary containment isolation blind flange to be removed during MODE 1, 2, or 3. In its application, the RBS licensee stated that, with the blind flange removed and certain restrictions and administrative controls in place, the IFTS penetration would not represent an uncontrolled breach of the containment boundary and that the containment isolation function would continue to be provided through implementation of these additional controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change permits removal of the blind flange on the Inclined Fuel Transfer System (IFTS) when primary containment operability is required in MODE[S] 1, 2, and 3. This will permit operation of the IFTS while the plant is operating. With respect to the probability of an accident, this aspect of the containment structure does not directly interface with the reactor coolant pressure boundary. The removal of this blind flange does not involve modifications to plant systems or design parameters that could contribute to the initiation of any accidents previously evaluated. Operation of IFTS is unrelated to the operation of the reactor, and there is no aspect of IFTS operation that could lead to or contribute to the probability of occurrence of an accident previously evaluated. Removal of the blind flange and operation of IFTS does not result in changes to procedures that could impact the occurrence of an accident.

With respect to the issue of consequences of an accident, the function of the containment is to mitigate the radiological consequences of a loss of coolant accident (LOCA) or other postulated events that could result in radiation being released from the fuel inside containment. While the proposed change does not change the plant design, it does permit alteration of the containment boundary for the IFTS penetration. Altering the containment boundary in this case (*i.e.,* removing the blind flange) results in some IFTS components possibly being subjected to containment pressure in the event of a LOCA. However, the additional post-accident peak pressure load to be imposed upon the components in the IFTS if the blind flange is removed is a small fraction of their design capability. Therefore, they are considered an acceptable barrier to prevent uncontrolled release of post-accident fission products for this proposed change.

The proposed change required examination of two potential leakage pathways. The larger

is the IFTS transfer tube, itself. The other, much smaller one, is a branch line used for draining the IFTS transfer tube during its operation. It is clear that the gate valve at the bottom of the transfer tube is always water sealed and maintained so by the submergence of the water in the transfer tube and in the fuel building spent fuel storage pool (the lower pool). The height of this water seal is greater than that necessary to prevent leakage from the bottom of the transfer tube during accidents that result in the calculated peak post-DBA [design basis accident] LOCA pressure, P_a. Furthermore, the hydraulically operated gate valve in the lower end of the tube will remain closed, and has pressure retaining capability greater than that of the containment structure itself. The potential leakage pathway from the drain piping which attaches to the transfer tube will be isolated if required, via administrative controls on the drain piping isolation valve. Additionally, the drain piping isolation valve will be added to the Primary Containment Leakage Rate Testing Program (Technical Specification 5.5.13) to ensure that leakage past this valve will be maintained consistent with the leakage rate assumptions of the accident analysis. Due to the test methodology, the portion of the large transfer tube piping outboard of the blind flange (the portion of the tube which becomes exposed to the containment atmosphere during the draining portion of the IFTS operation) will also be part of the leakage rate test boundary and will therefore also be tested. Therefore, no unidentified leakage will exist from the piping and components that are outboard of the blind flange, and the leakage rate assumptions of the accident analysis will be maintained. Note that the bottom gate valve in the IFTS transfer tube will remain closed for this test evolution.

Therefore, the proposed change does not result in a significant increase in the probability of the consequences of previously evaluated accidents, provided the bottom gate valve remains closed during MODE 1, 2, or 3 operation.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous analyzed.

The proposed change consists of the removal of a passive component which is not part of the primary reactor coolant pressure boundary nor involved in the operation or shutdown of the reactor. Being passive, its presence or absence does not affect any of the parameters or conditions that could contribute to the initiation of any incidents or accidents that are created from a loss of coolant or an insertion of positive reactivity. Realigning the boundary of the primary containment to include portions of the IFTS is also passive in nature and therefore has no influence on, nor does it contribute to the possibility of a new or different kind of incident, accident or malfunction from those previously analyzed. Furthermore, operation of the IFTS is unrelated to the operation of the reactor and there is no mishap in the process that can lead to or contribute to the possibility of losing any coolant from the reactor or introducing the chance for an insertion of positive or negative reactivity, or any other accidents different from and not bounded by those previously evaluated.

Therefore, the proposed change does not result in creating the possibility of a new or different kind of accident from any accident previously evaluated, provided the bottom gate valve remains closed during MODE 1, 2, or 3 operation.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change involves the realignment of the primary containment boundary by removing the blind flange which is a passive component. The margin of safety that has the potential of being impacted by the proposed change involves the dose consequences of postulated accidents which are directly related to potential leakage through the primary containment boundary. The potential leakage pathways due to the proposed change have been reviewed, and leakage can only occur from the administratively controlled IFTS transfer tube drain piping, and from the IFTS transfer tube itself. A dedicated individual will be designated to provide timely isolation of this drain piping during the duration of time when this proposed change is in effect. The conservatively calculated dose which might be received by the designated individual while isolating the drain piping is calculated to be 3.8 rem TEDE [total effective dose equivalent], which remains within the guidelines of General Design Criterion (GDC) 19 (10 CFR 50, Appendix A, Criterion 19). Furthermore, the drain piping isolation valve will be added to the Primary Containment Leakage Rate Testing Program (Technical Specification 5.5.13) to ensure that leakage from the piping and components located outboard of the blind flange will be maintained consistent with the leakage rate assumptions of the accident analysis.

Studies of the capability of the IFTS system to withstand containment pressurization under severe accident conditions have been conducted. These studies conclude that IFTS, including the transfer tube and its valves, has a capability to withstand beyond design basis severe accident containment pressures which is greater than that of the containment structure itself. The RBS Emergency Operating Procedures (EOPs) are based on an ultimate containment failure pressure capability of 53 psig [pounds per square inch—gauge], which represents a margin of safety of 38 psi above the 15 psig containment design pressure. This margin of safety is not impacted with the IFTS blind flange removed as long as the IFTS bottom valve remains closed. This capability to withstand containment pressurization under severe accident conditions envelops other non-DBA LOCA scenarios, such as the small break LOCA. For the large break LOCA, additional defense-in-depth is provided by maintaining a water seal greater than P_a above the outlet of the IFTS transfer tube in the lower pool.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St.Charles Parish, Louisiana

Date of amendment request: July 15, 1999 (NPF–38–216).

Description of amendment request: One proposed change adds a Technical Specification (TS) Bases Control Program to the Waterford 3 TS Administrative Controls Section, modeled after the guidelines contained in NUREG–1432. Additionally, the proposed change corrects an editorial error identified in the TS following issuance of Amendment 146, dated October 19, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed changes to the Waterford 3 [Waterford Steam Electric Station, Unit 3] Technical Specifications add a TS Bases Control Program and correctly reference the appropriate document where administrative controls were relocated. The TS Bases Control Program will provide administrative controls that ensure changes to the TS Bases are appropriately reviewed and consistent with the Updated Final Safety Analysis Report (UFSAR). The addition of the proposed program does not affect any accident initiator or mitigation of any events analyzed in Chapter 15 of the UFSAR. Also, neither change has any affect on the operation of any structures, systems, or components or the assumptions of any accident analyses.

The TS Bases Control Program will ensure that any change to the Bases that involves an unreviewed safety question will receive prior Nuclear Regulatory Commission approval. Changing the reference to the Quality Assurance Program Manual (QAPM) for the item relocated to the QAPM is purely administrative.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed changes to the Waterford 3 TS add a TS Bases Control Program and correctly reference the appropriate document where administrative controls were relocated. The addition of a TS Bases Control Program represents an administrative function performed under existing regulatory controls consistent with 10 CFR 50.59. The proposed change to reference the appropriate document where an administrative control was relocated is purely administrative in nature. The change merely corrects the Technical Specifications wording to reflect the actual location of the record retention requirements for records of reviews performed on changes to the Process Control Plan (PCP) and Offsite Dose Calculation Manual (ODCM) in the QAPM.

These proposed changes do not involve a change in plant design or affect the configuration or operation of any structure, system, or component, nor does it involve any potential initiating events that would create any new or different kind of accident. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes to the Waterford 3 TS add a TS Bases Control Program and correctly reference the appropriate document where administrative controls were relocated. The addition of a TS Bases Control Program is an administrative change and has no [a]ffect on a margin of safety, as defined by Section 2 of the TS. The only [a]ffect of the TS Bases Control Program is to establish controls over how TS Bases changes are reviewed and implemented consistent with 10 CFR 50.59.

The proposed change to a reference in the Administrative Controls section merely corrects the TS wording to reflect the actual location of the record retention requirements for records of reviews performed on changes to the PCP and ODCM in the QAPM.

These proposed changes do not involve a change in plant design or have any affect on the plant protective barriers. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1999 (NPF–38–217).

Description of amendment request: The proposed change creates a new Technical Specification (TS) for the Main Feedwater Isolation Valves Section modeled after the guidelines of TS 3.7.3 in NUREG–1432. Additionally, the letter provides for Nuclear Regulatory Commission (NRC) Staff review of an unreviewed safety question regarding the crediting of the Reactor Trip Override feature and Auxiliary Feedwater Pump high discharge pressure trip as assisting the operation of the Main Feedwater Isolation Valves during their required safety function, to close on a Main Steam Isolation Signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change to add the Main Feedwater Isolation Valves (MFIVs) to the Technical Specifications (TS) and provide an allowed outage time of 72 hours with appropriate required ACTIONs does not affect the operation of any structures, systems, or components or the assumptions of any accident analyses. The MFIVs are primarily designed to mitigate the consequences of a Main Steam Line Break (MSLB), and the Feedwater Line Break (FWLB). This TS change ensures the 5 second closure time currently assumed in the Waterford 3 [Waterford Steam Electric Station, Unit 3] analysis, thus it preserves the current analysis. Hence, the consequences of accidents previously evaluated do not change. Therefore, this change does not involve an increase in the consequences of any accident previously evaluated. Adding the MFIVs to the TS will not initiate an accident. Providing a TS and allowed outage time makes no changes to the plant and, thus, no increase in the probability of any accident previously evaluated.

The accidents/events that may be affected by the proposed resolution to credit the Reactor Trip Override (RTO) circuitry for the Steam Generator [SG] Feed Pumps (SGFPs) during SGFP operation and the crediting of the Auxiliary Feedwater (AFW) pump high discharge pressure trip during AFW pump operation are the MSLB and the FWLB.

The crediting of the RTO circuitry for the SGFPs and the crediting of the AFW pump trip will not affect the probability of occurrence of a MSLB or FWLB. Neither the SGFPs nor the AFW pump are initiators of either line break.

The crediting of the RTO circuitry for the SGFPs and the crediting of the AFW pump trip will not adversely affect the consequences of a MSLB or FWLB. Ultimately, the RTO feature allows more reliable MFIV closure by reducing the differential pressure against which the MFIVs must close while not introducing a new failure mechanism such as a Loss of Feedwater or water hammer event.

The RTO feature (which has always been a part of the Waterford 3 plant design) mitigates the consequences of the MSLB and MFLB by reducing flow to the affected steam generator and containment.

The Loss of Feedwater Event can be initiated by the loss of a SGFP. The currently analyzed Loss of Feedwater Event evaluates the loss of both SGFPs, which bounds a potential loss of one SGFP. Therefore, any modification that could increase the probability of a pump trip could increase the probability of this event. Since the proposed solution of crediting RTO features of the SGFPs and the trip of the AFW pump for the MFIV margin issue uses existing functions, no new features/trips will be added, and there is no increase in the probability or consequences of a Loss of Feedwater Event. The only plant modification being made is to enhance RTO such that it will run the SGFPs back to a minimum speed on a reactor trip, even when the FWCS [Feedwater Control System] is in manual. Although this slows the pump down, feedwater and the SGFPs remain available and the Loss of Feedwater Event probability is not significantly increased. The modification to make RTO function when the FWCS is in manual is not significant since the FWCS is in manual such a short period of time during plant operation.

The AFW system is not credited in any accident analysis. The Emergency Feedwater (EFW) system is relied upon in the safety analyses to replenish SG inventory. Therefore, crediting the AFW pump discharge pressure trip will not involve an increase in the probability or consequences of any accident.

In conclusion, the proposed TS change and resolution to the MFIV margin issue will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of

accident from any accident previously evaluated?

Response: The proposed TS change in itself does not change the design or configuration of the plant. No new or different equipment is being installed by the TS. No new or different accidents result from the addition of the MFIVs to the TS. Previously performed accident analyses remain valid. The proposed allowed outage time and required actions of the proposed TS do not change the procedural operation of the plant, but specify the requirements for treatment of the MFIVs under the plant TS. Therefore, no new or different type of accident from any accident previously evaluated is created.

No new system interaction is created by crediting the existing RTO and AFW pump trip. Failure to isolate feedwater would require two failures, failure of the RTO or AFW circuitry, in addition to the failure of the Main Feedwater Regulating Valves (MFRVs) and Startup Feedwater Regulating Valves (SFRVs) to close, and is beyond single failure criteria. If the RTO and AFW features were the single failure, then closure of the regulating valves would be credited for MSIS [Main Steam Isolation Signal] isolation since the regulating valves were designed to close against SGFP shutoff head.

RTO and AFW pump trips would not be considered initiators of a MSLB or FWLB, but could be considered initiators of a Loss of Feedwater Event. However, this event is bounded by the analyzed Waterford 3 Loss of Feedwater Events. No new event is created. The only hardware change being made is the use of RTO for pump run back when the FWCS is in manual. The existing signal will be used and routed through the same methods as are currently installed, ensuring it will run the pump back appropriately. Therefore, no new system interactions or events are created.

The new method of potential failure that has not previously been evaluated is in the fact that Waterford 3 would now be crediting a non-safety related circuit for closure of the safety related MFIVs. Non-safety features are not normally credited for the proper operation of a safety related component. However, in this case, for the valve to close in the 5 seconds assumed in safety analyses, the RTO and AFW pump trip will be credited. Because this is new, different and not a previously approved allowance, this resolution must be submitted for NRC Staff approval. Entergy believes this resolution is acceptable based on the high degree of reliability of these components.

The system design, as discussed above, does not increase the potential for a Loss of Feedwater Event and current analyses bound all potential accident scenarios. Therefore, the proposed TS change and resolution to the MFIV margin issue will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The MFIVs have no [a]ffect on a margin of safety as defined by Section 2 of the TS. Their only [a]ffect is response to the accidents described above, which will be enhanced by specifying an allowed outage time, action requirements and surveillance requirements in the TS. Therefore, no reduction in the margin of safety is involved with the addition of these valves to the TS.

No new system interaction is created by the crediting of the RTO feature or the AFW pump trip, or the addition of RTO operation in manual.

The proposed resolution does affect a part of a protective boundary, the MFIV, which serves to isolate the Main Feedwater system from portions of the system inside containment. However, it does not affect operation or function of the valve itself since no changes to the valve are being made. The proposal allows increased margin for valve closure; therefore, margins of safety are not affected. The valve will close within the time limits required by safety analyses and general design criteria.

Therefore, the proposed TS change and resolution to the MFIV margin issue will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1999 (NPF–38–218).

Description of amendment request: The proposed changes extend the Reactor Coolant System Pressure Temperature Curves to 20 Effective Full Power Years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed changes will not increase the probability or consequences of any accident previously evaluated since the proposed changes revise the pressure/temperature limits in accordance with 10 CFR 50, Appendix G, utilizing the latest NRC [Nuclear Regulatory Commission] guidelines in Regulatory Guide 1.99, Revision 2, relative to estimating neutron irradiation damage to the reactor vessel. The proposed changes also maintain the conservative limits with respect to the low temperature overprotection (LTOP) system and heatup and cooldown restrictions.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed since they do not introduce new systems, failure modes, or other plant perturbations. The proposed changes revise the pressure/temperature limits in accordance with 10 CFR 50, Appendix G, utilizing the latest NRC guidelines in Regulatory Guide 1.99, Revision 2, relative to estimating neutron irradiation damage to the reactor vessel.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes will not involve a significant reduction in the margin of safety since equal or more stringent pressure/temperature limitation requirements for reactor operation will be applied. The proposed changes were derived in accordance with approved NRC methodology which was developed to assure the reactor coolant system pressure boundary is designed with sufficient margin to withstand any condition during normal operation including anticipated operational occurrences and system inservice leak and hydrostatic tests.

These requirements were revised in accordance with 10 CFR 50, Appendix G, utilizing the latest NRC guidance in Regulatory Guide 1.99, Revision 2, relative to estimating neutron irradiation damage to the reactor vessel. The LTOP system limits were also reanalyzed for the proposed changes.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 19, 1999. (NPF–38–219).

Description of amendment request: The proposed changes modify Waterford Steam Electric Station, Unit 3 (Waterford 3) Technical Specification (TS) 4.5.2.f.2 by increasing the performance requirement for the low pressure safety injection (LPSI) pumps. The change revises the LPSI pump Surveillance Requirements to measure pump developed head, instead of pump discharge pressure. The associated changes to TS Bases are included in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: Increasing the LPSI pump performance requirements will not increase the probability or consequences of any accidents. There are no physical changes to the pump. The only procedure changes required are to Surveillance Procedure OP–903–030, ''Safety Injection Pump Operability Evaluation.'' The changes do not impact plant operating procedures. The LPSI system is primarily designed to mitigate the consequences of a large break Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not alter plant operations, nor does it alter the physical plant. The change only increases existing equipment performance requirements. No different accidents result from the increase in performance requirements. No change is being made to the parameters within which the plant is operated. The setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only increase the performance requirements of the LPSI pumps.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: To the contrary, the change increases LPSI pump performance requirements, increasing the margin between the TS performance requirements and the analytical limit.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 4, 1999 (NPF–38–222).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.5.2 to extend the allowed outage time (AOT) to seven days for one high pressure safety injection (HPSI) train inoperable and TS 3.5.3 to change the end-state to HOT SHUTDOWN with at least one OPERABLE shutdown cooling train in operation. Additionally, an AOT of 72 hours in TS 3.5.2 is imposed for other conditions where the equivalent of 100 percent emergency core cooling system (ECCS) subsystem flow is available. If 100 percent ECCS flow is unavailable due to two inoperable HPSI trains, an ACTION has been added to restore at least one HPSI to OPERABLE status within one hour or place the plant in HOT STANDBY in six hours and to exit the MODE of applicability in the following six hours. In the event the equivalent of 100 percent ECCS subsystem flow is not available due to other conditions, TS 3.0.3 is entered. The Limiting Condition for Operation terminology is being changed for consistency with the ECCS requirements. Additionally, the associated TS Bases are being changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The High Pressure Safety Injection System (HPSI) is part of the Emergency Core Cooling System subsystem. Inoperable HPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The HPSI system is primarily designed to mitigate the consequences of a Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analyses. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the HPSI AOT extension, probabilistic safety assessment (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. These analyses are detailed in report CE NPSD–1041, ''Joint Applications Report for High Pressure Safety Injection System Technical Specification Modifications,'' March 1998.

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.2 does not affect the probability or the consequences of an accident.

The proposed change allows a combination of equipment from redundant trains to be inoperable provided that at least the equivalent of a single ECCS subsystem remains operable. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing equipment from redundant trains to constitute a single operable subsystem does not increase the probability that a failure leading to an analyzed event will occur. The ECCS components are passive until an actuation signal is generated. This change does not increase the failure probability of the ECCS components. This change reduces the plant's susceptibility to common cause failures. As such, the probability of occurrence for a previously analyzed accident are not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only provide the plant some flexibility in maintaining the minimum equipment required to be operable to perform the ECCS function while in this condition. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analysis to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes involve no significant increase in risk. These evaluations are detailed in report CE NPSD–1041. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 72 hours with components inoperable in both ECCS subsystems, is acceptable based on the remaining ECCS components providing 100% of the required ECCS flow. The reduced potential for a self-induced plant transient resulting from unit shutdown required for a second inoperable ECCS train is minimized. Therefore, the change does not involve a significant reduction in the margin of safety, and is offset by minimizing the potential for a self induced plant transient.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 4, 1999 (NPF–38–223).

Description of amendment request: The proposed change modifies Technical Specification (TS) 3.5.2 to extend the allowed outage time (AOT) to seven days for one low pressure safety injection (LPSI) train inoperable. Additionally, an AOT of 72 hours is imposed for other conditions where the equivalent of 100 percent emergency core cooling system (ECCS) subsystem flow is available. If 100 percent ECCS flow is unavailable due to two inoperable LPSI trains, an ACTION has been added to restore at least one LPSI train to OPERABLE status within one hour or place the plant in HOT STANDBY in six hours and to exit the MODE of applicability in the following six hours. In the event the equivalent of 100 percent ECCS subsystem flow is not available due to other conditions, TS 3.0.3 is entered. The Limiting Condition for Operation terminology is being changed for consistency with the ECCS requirements. Additionally, the associated TS Bases are being changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The Low Pressure Safety Injection System (LPSI) is part of the Emergency Core Cooling System subsystem. Inoperable LPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analysis. Hence, the consequences of accidents previously evaluated do not change.

In order to fully evaluate the LPSI AOT extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD–995, Combustion Engineering Owners Group ''Joint Applications Report for Low Pressure Safety Injection System AOT Extension.''

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.2 does not affect the probability or the consequences of an accident.

The proposed change allows a combination of equipment from redundant trains to be inoperable provided that at least the equivalent of single train of ECCS remains operable. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing equipment from redundant trains to constitute a single operable train does not increase the probability that a failure leading to an analyzed event will occur. The ECCS components are passive until an actuation signal is generated. This change does not increase the failure probability of the ECCS components. This change reduces the plant's susceptibility to common cause failures. As such, the probability of occurrence for a previously analyzed accident are not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No. The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only provide the plant some flexibility in maintaining the minimum equipment required to be operable to perform the ECCS function while in this Condition. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD–995. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 72 hours with components inoperable in both ECCS trains, is acceptable based on the remaining ECCS components providing 100% of the required ECCS flow. The reduced potential for a self-induced plant transient resulting from unit shutdown required for a second inoperable ECCS train is minimized. Therefore, the change does not involve a significant reduction in the margin of safety, and is offset by minimizing the potential for a self induced plant transient.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: December 3, 1998.

Description of amendment requests: The proposed amendments would add a new Technical Specification (T/S) and associated Bases for the distributed ignition system (DIS). The proposed change incorporates the technical requirements of NUREG–1431, Revision 1, ''Standard Technical Specifications, Westinghouse Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The T/S being proposed for the DIS is consistent with its design and operation as previously reviewed and approved, and therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendments involve new requirements for the T/Ss and do not delete any existing requirements.

2. The proposed amendment will not create the possibility of a new or different kind of accident previously evaluated.

The T/S being proposed for the DIS is consistent with its design and operation as previously reviewed and approved, and therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The T/S being proposed for the DIS is consistent with [the] design and operation as previously reviewed and approved, and therefore, does not involve a significant reduction in a margin of safety. Compliance with the proposed T/S will provide additional assurance of system availability to maintain a margin of safety for containment integrity during degraded core events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 15, 1999.

Description of amendment request: This proposed technical specification (TS) change will revise the average power range Monitors (APRMs) neutron flux-high (flow biased) allowable value based on a revised power to flow map. The revised power to flow map extends the current plant operating domain to above the rated rod line, to within an envelope referred to as the maximum extended load line limit (MELLL) and adds the increased core flow (105%) region. The current power to flow map is based on a region bounded by the extended load line limit (ELLL) and evaluations prepared as part of the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Attachment 3 [to the December 15,1999 application] (Reference 1) evaluates operation in the Maximum Extended Load Line Limit (MELLL) and Increased Core Flow (ICF) regions and the impact on equipment and safety system performance. Impacts on containment, the reactor vessel, Recirculation System, reactor vessel internals, limiting transients for the Cycle 20 reload (upcoming refuel outage), Loss of Coolant Accident (LOCA), and Anticipated Transients Without SCRAM (ATWS) events were evaluated. The conclusion is that for all events, accidents, and equipment evaluated, operation and event response remain within previously established design limits and acceptance criteria. No changes in the initiators of accidents previously evaluated are being made by this change. Because operation in the expanded regions maintains adequate design margin and there are no changes in the accident initiators, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

In support of operation in the MELLL region, the proposed change modifies (increases) the Average Power Range Monitor (APRM) Neutron Flux-High (Flow Biased) allowable value. Changes to the setpoint and allowable value will be implemented in accordance with approved setpoint methodology and plant procedures (References 7 and 8). As noted in Technical Specifications (TS) Bases Section B.3.3.1.1.2.b: ''No specific safety analyses take credit for the APRM Neutron Flux-High (Flow Biased) Function.'' The APRM allowable value credited in accident analyses is based on the 120% fixed scram-allowable value (TS Table 3.3.1.1–1, Function 2.c), which remains unchanged as a result of this requested TS change. Though not credited in analyses, the limiting flow biased value of 119% Reactor Thermal Power (RTP) also remains unchanged. Evaluations presented in Attachment 3 demonstrate that operation in the MELLL envelope, with reliance on the credited fixed scram allowable value (analytically assumed at 123% RTP to justify a 120% TS allowable value), results in event and accident responses within design limits and established acceptance criteria. Therefore, no significant increase in source term, radiological consequences or other accident consequences occurs as a result of the proposed change.

The proposed change has no affect on operation in the ICF region. The allowable value, as part of the proposed change, will reach its clamped upper limit value of 119% reactor thermal power. Core flows at or above this level will result in the allowable value reaching its current TS upper limit of 119%. As stated above, the limiting value remains unchanged as part of this request.

The postulated failure mechanisms for the equipment are not changed, nor are any

design limits exceeded. The proposed change will result in the need to replace APRM equipment to allow operation in the extended power to flow domain. These replacements will be evaluated per the requirements of 10 CFR 50.59 as part of the Cooper Nuclear Station (CNS) design change process to confirm no Unreviewed Safety Question is created. Therefore, implementation of this proposed TS amendment will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident than previously evaluated.

This proposed change does not modify the functional requirements of the affected equipment, create any new system interfaces or interactions, create any new process conditions that exceed design limits, nor create any new system failure modes or sequences of events that could lead to an accident.

The postulated failure mechanisms for the equipment are not changed, nor are any design limits or acceptance criteria exceeded. The proposed change will result in the need to replace APRM equipment to allow operation in the extended power to flow domain. These replacements will be evaluated per the requirements of 10 CFR 50.59 as part of the CNS design change process to confirm no Unreviewed Safety Question is created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

Change to the APRM Neutron Flux-High (Flow Biased) allowable value is still limited by the 119% RTP value of TS. This value is not credited in the safety analyses. In addition, the existing 120% fixed scram allowable value (TS Table 3.3.1.1–1, Function 2.c) still provides the same margin to the Analytical Limit of 123% RTP. Analyses documented in Attachment 3 demonstrate that for operation in the MELLL envelope or ICF region, adequate margin to design limits is maintained and event acceptance criteria are met. Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 22, 1999.

Description of amendment request: The proposed license amendment requests Nuclear Regulatory Commission (NRC) review and approval of revisions to the Cooper Nuclear Station (CNS) design basis accident (DBA) radiological assessment calculational methodology used to demonstrate compliance with the Exclusion Area Boundary and Low Population Zone dose acceptance criteria specified in 10 CFR 100.11, and the control room dose acceptance criteria discussed in General Design Criteria (GDC) 19 of 10 CFR 50, Appendix A. The revisions entail a complete rewrite of the radiological assessment calculational methodology. The proposed changes do not revise the accident category, general accident description, identification of accident cause, frequency classification, starting conditions of the accident, accident sequence of events, or system operation as described in the CNS Updated Safety Analysis Report (USAR). The revised radiological assessment calculational methodology does, however, involve changes to the radiological consequence summary, fission product release from fuel assumptions, fission product release to secondary containment assumptions and conditions, fission product release to the environs assumptions and initial conditions, and radiological effects summary described in the CNS USAR. Additionally, the revised CNS DBA radiological assessment calculational methodology incorporates the GDC 19 control room dose acceptance criteria determination as part of the assessment. Previously the control room dose assessment was maintained as separate design calculations and not included in the CNS USAR DBA radiological assessment summaries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions to the Design Basis Accident (DBA) radiological assessment calculational methodology do not affect the accident initiators or precursors of accidents previously evaluated. The proposed revisions to the methodology do not affect the existing design, function or operation of systems, structures or components in the facility. No new or different type of plant equipment is installed by the revised radiological assessment calculational methodology. Plant operating modes are not changed due to the proposed revision to the DBA radiological assessment calculational methodology. The proposed revisions are calculational in nature and serve only to incorporate more recent site specific meteorological data, reflect plant specific system operating parameters and design, utilize more widely accepted accident assumptions for a facility of Cooper Nuclear Station's vintage, incorporate the Technical Information Document (TID–14844) source term to be consistent with the accident assumptions used, update fuel parameter considerations to include higher burnup fuel designs, and to utilize generic and updated calculational and software methodologies to perform the analysis. These revisions improve the consistency between the accident dose calculation assumptions and improve the documentation basis for each accident calculation. The revisions utilize conservatively lower accident mitigation system filter efficiency assumptions and incorporate plant specific accident mitigation system operating parameter and design assumptions which result in a calculated radiological consequence increase. Operation of accident mitigation systems, structures and components is not altered by the changes in accident mitigation assumptions. Due to the broad changes in the calculational methodology and assumptions, and an increase in the postulated accident source term, the calculated radiological dose consequences of each design basis accident have changed and in some cases increased. In each case, however, the calculated radiological dose consequences satisfy the Exclusion Area Boundary and Low Population Zone radiological dose acceptance criteria specified in 10 CFR 100 and the control room dose acceptance criteria discussed in General Design Criteria 19 (GDC 19) of 10 CFR 50, Appendix A. Therefore, the proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The proposed revisions to the DBA radiological assessment calculational methodology do not change the existing design, function or operation of systems, structures or components in the facility. No new or different type of plant equipment is installed by this change. There are no changes to existing design parameters governing plant operation, plant operating modes, or changes in system interfaces. No new types of accident initiators or precursors are created by the proposed revision to the DBA radiological assessment calculational methodology. The proposed revisions are calculational in nature and serve only to incorporate more recent site specific meteorological data, reflect plant specific system operating parameters and design, utilize more widely accepted accident assumptions for a facility of Cooper Nuclear Station's vintage, incorporate the TID–14844 source term to be consistent with the accident assumptions used, update fuel parameter considerations to include higher burnup fuel designs, and to utilize generic and updated calculational and software

methodologies to perform the analysis. These revisions improve the consistency between the accident dose calculation assumptions and improve the documentation basis for each accident calculation. Therefore, the proposed change does not create the possibility of a new or different kind of accident previously evaluated.

3. Does not create a significant reduction in the margin of safety.

The proposed revisions to the DBA radiological assessment calculational methodology do not involve a relaxation in the criteria used to establish safety limits or a relaxation in the limiting conditions for operation. The accident analysis sequence of events remains unchanged. The proposed change will not result in any challenges to plant equipment, fuel integrity, or the reactor coolant system pressure boundary. The proposed revisions are calculational in nature and serve only to incorporate more recent site specific meteorological data, reflect plant specific system operating parameters and design, utilize more widely accepted accident assumptions for a facility of Cooper Nuclear Station's vintage, incorporate the TID–14844 source term to be consistent with the accident assumptions used, update fuel parameter considerations to include higher burnup fuel designs, and to utilize generic and updated calculational and software methodologies to perform the analysis. These revisions improve the consistency between the accident dose calculation assumptions and improve the documentation basis for each accident calculation. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 19, 1999.

Description of amendment request: The licensee proposes to change the Technical Specifications (TS) by relocating the specific requirements of TS 6.4.3, ''Nuclear Safety Audit Review Committee (NSARC),'' to the Quality Assurance Program located in the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed change does not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed change is administrative in nature and does not decrease the effectiveness of programmatic controls or the procedural details of assuring operation of the facility in a safe manner.

The relocation of the Nuclear Safety Audit Review Committee requirements from the Technical Specification to a new Appendix 17C in UFSAR Chapter 17.2 does not alter the performance or frequency of these activities. Future changes to the Quality Assurance Program are subject to the 10 CFR 50.54(a) and 10 CFR 50.59 and change processes.

The proposed change will not degrade the ability of systems, structures and components important to safety to perform their safety function. The proposed change will not change the response of any system, structure or component important to safety as described in the UFSAR. Since the plant response to an accident will not change, there is no change in the potential for an increase in the consequences of an accident previously analyzed. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed change. The proposed change has no adverse impact on component or system interactions. The proposed change will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSAR. The proposed change is administrative in nature and does not change the level of programmatic controls and procedural details of assuring operation of the facility in a safe manner. The proposed changes involve the relocation of the requirements of the Nuclear Safety Audit Review Committee from TS 6.4.3 to Updated Final Safety Analysis Report, Chapter 17.2, ''Quality Assurance Program'' in a new Appendix 17C. Future changes to the Quality Assurance Program are subject to the 10 CFR 50.54(a) and 10 CFR 50.59 and change processes.

Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes involve the relocation of the requirements of the Nuclear Safety Audit Review Committee from TS 6.4.3 to Updated Final Safety Analysis Report, Chapter 17.2, ''Quality Assurance Program'' in a new Appendix 17C. There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change is administrative in nature and does not change the level of programmatic controls and procedural details controls of assuring operation of the facility in a safe manner.

Future changes to the Quality Assurance Program are subject to the 10 CFR 50.54(a) and 10 CFR 50.59 change processes. Therefore, relocation of the requirements contained in TS 6.4.3 to the Update Final Safety Analysis Report does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 29, 1999.

Description of amendment request: The licensee proposes to change Technical Specification (TS) Surveillance Requirement (SR) 4.8.1.1.2f., to relocate sub requirement 4.8.1.1.2f.1 which requires inspection of the emergency diesel generators (EDGs) on an 18-month cycle to be subjected to an inspection in accordance with manufacturers recommendations, to the Seabrook Station Technical Requirements Manual (SSTRM).

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated. The proposed change does not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Performance of EDG inspection activities based on condition-based maintenance rather than time-directed maintenance will neither exacerbate nor significantly increase the probability or consequences of an accident previously evaluated in the Seabrook Station UFSAR. North Atlantic has extensive experience and expertise in operating and maintaining the EDGs to determine the appropriate maintenance activities for demonstrating operability of the EDGs. North Atlantic will continue to use, in conjunction with manufacturer recommendations, prudent engineering judgment when conducting testing, preventive and corrective maintenance activities on the EDGs. In addition, the other surveillance testing required by SR 4.8.1.1.2f would continue to ensure that the EDGs are capable of performing their safety function.

Throughout the first six fuel cycles, overall EDG condition has steadily improved with the use of improved design, utilization of better condition monitoring tools and procedures and the reduction of intrusive preventative maintenance tasks made possible by the improved on-line condition monitoring methods. These improvements resolved problems that were recognized during the early years of EDG operation.

North Atlantic has implemented the Maintenance Rule Program in accordance with the provisions of 10 CFR 50.65, Regulatory Guide (RG) 1.160, and NUMARC 93–01, ''Industry Guide for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants.''

North Atlantic's maintenance rule program establishes specific performance criteria for SSCs. Reliability and unavailability performance criteria have been assigned to risk significant and standby safety-related non-risk significant SSCs. Other in-scope SSCs have been assigned appropriate reliability and/or plant level performance criteria. SSCs that are determined to not meet the established performance criteria are designated as (a)(1) and are subject to action plans, goal setting, and goal monitoring. Performance of (a)(1) SSCs is compared to the established goals. When it is determined that the performance goals have been achieved, a SSC may be returned to the normal performance monitoring (a)(2) status.

With regard to the EDGs, these components and the associated support systems are risk significant and standby safety-related. The experience to date, applying the Maintenance Rule Program to the EDGs, has proven to be positive. Risk informed decision-making concerning the benefits of maintenance and time out of service has maintained reliable EDGs with unavailability consistent with the assumptions in the Seabrook Station Probabilistic Risk Assessment (PRA).

Furthermore, Operations Department personnel perform daily, weekly, biweekly, monthly and quarterly walkdowns and inspections of various items as well as the monthly surveillance run on each diesel. These inspections, combined with system control panel alarms, engine oil sampling and on-line monitoring of engine vibration and running performance (cylinder firing, fuel delivery and exhaust temperatures), enable expeditious response to a developing degraded condition and provide a mechanism for failure identification prior to performance of the refueling interval surveillances.

Based on the reviews of the surveillance tests, inspections and maintenance activities, it is concluded that there is no significant impact on the reliability of the EDGs and, therefore, there is no significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed change. The proposed change has no adverse affect on component or system interactions. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change does not adversely affect equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change does not adversely affect the EDG's ability to ensure that sufficient power is available to supply the safety related equipment required for: 1) the safe shutdown of the facility, and 2) the mitigation and control of accident conditions within the facility.

Surveillance testing of the EDGs during normal plant operation provides assurance that the proposed change will not adversely affect the reliability of the EDGs. North Atlantic will continue to use, in conjunction with manufacturer's recommendations, prudent engineering judgment when conducting testing, preventive, and corrective maintenance activities on the EDGs. In addition, the other surveillance testing required by SR 4.8.1.1.2f would continue to ensure that the EDGs are capable of performing their safety function. Thus, it is concluded that the EDGs would continue to be available upon demand to mitigate the consequences of an accident and, therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities.Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 3, 1999.

Description of amendment request: The licensee proposes to change the technical specifications (TS) by incorporating reference to the American Society for Testing and Materials (ASTM) Standard D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Charcoal,'' as the test protocol for charcoal filter laboratory testing. In addition, there will be a change to Surveillance Requirements 4.7.6.1d.5) and 4.9.12d.4) specifying a minimum required heater output based on design rated voltage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes modify the Technical Specifications to reference

appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in ESF [engineered safety feature] filtration systems in accordance with ASTM D3803–89. The testing methodology associated with ASTM D3803–89 provides more stringent requirements than what is currently employed. These more stringent requirements will not result in operations that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

The proposed change associated with verification of heater capacity dissipation by specifying a minimum required output based on design rated voltage does not affect continued operability of the heater. Stipulating the design rated voltage ensures the heater(s) remains capable of performing its safety function. Specifying an upper kW range band is restrictive and has been determined to be unnecessary. There is no safety concern with the heaters operating at a higher kW output. Operating at a higher kW output improves dehumidification. Should maximum operating bus voltage conditions be experienced it does not pose a fire hazard or dry-out concern for the charcoal filters.

There are no changes to previous accident analyses. The radiological consequences associated with these analyses remain unchanged. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the design assumptions, conditions or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes have no impact on component or system interactions.

The proposed changes modify the Technical Specifications to reference appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems in accordance with ASTM D3803–89. The changes do impose different, more conservative testing requirements, on the ESF filtration systems charcoal samples. However, there is no alteration in the methods employed to obtain the charcoal sample and testing is performed offsite.

The proposed change associated with verification of heater capacity dissipation by specifying a minimum required output based on design rated voltage does not affect continued operability of the heater. The design function of the heater for humidity control remains unchanged. Deletion of the upper kW range does not pose a fire or dry-out concern for the charcoal filters.

These changes are consistent with the safety analyses and licensing basis. The proposed changes do not introduce any new modes of plant operation, or alter any operational setpoints.

Since the proposed changes do not involve the physical alteration of SSCs (i.e., no new or different type of equipment to be installed) or changes in the methods governing normal plant operation, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes modify the Technical Specifications to reference appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems in accordance with ASTM D3803–89. The imposition of the more conservative charcoal filter testing requirements associated with ASTM D3803–89 has no significant impact on a margin of safety. The conservative nature of ASTM D3803–89 is by definition, providing additional restrictions to enhance plant safety.

The proposed change associated with specifying a minimum required heater output based on design rated voltage does not reduce the ability of the heater to provide the minimum required kW output for humidity control. Deletion of the upper kW range does not pose a fire or dry-out concern for the charcoal filters.

The proposed changes maintain requirements within the safety analysis and licensing basis. Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 7, 1999.

Description of amendment request: The proposed changes affect Technical Specification 3/4.7.8, ''Plant Systems, Snubbers,'' by removing the current special exception which precludes applying the eighteen month functional testing surveillance to the Steam Generator Hydraulic Snubbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The snubbers provide a restraint function to mitigate the consequences of a Main Steam Line Break (MSLB) or to limit seismic induced movements of the steam generators so as to protect the attached Reactor Coolant System (RCS) piping and therefore prevent the initiation of a Loss of Coolant Accident (LOCA).

While the proposed surveillance changes will extend the time period required for 100% inspection of all steam generator snubbers and also the actual service life of the snubber seals, the testing of samples at reduced intervals will actually provide a more reliable and timely indication of snubber functionality and provide increased assurance that generic concerns associated with this snubber set will be detected prior to any failure. The proposed surveillance requirements are the same as currently used for the balance of Millstone Unit No. 2 hydraulic snubbers. Given the complete similarity of design and operation for these components, the sampling approach is well suited for these snubbers. Given the general acceptance of a 10% sampling approach in the general snubber population, its use here for this homogenous set of components is fully justified. In addition to the 10% sample that will be functionally tested on an eighteen month interval, a concurrent 100% visual inspection is conducted during each test period, providing added assurance that no seal failures will go undetected for any significant period. This visual inspection program is unchanged from the existing surveillance program as currently documented in the Millstone Unit No. 2 Technical Specification. The anticipated reliability under the new surveillance frequency and testing methods proposed for the steam generator snubbers will not affect the probability of occurrence of a LOCA or a MSLB as the snubbers' ability to perform their function will prevent over stressing of either the Main Steam (MS) or RCS piping attached to the steam generators. Furthermore, the anticipated reliability under the new surveillance frequency and testing methods proposed for the steam generator snubbers will ensure that the existing evaluated consequences for these accidents will not be increased. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Bases Section 3/4.7.8 will delete the text associated with the current exception taken for steam generator snubbers. This change will make the discussion in the Bases consistent with the proposed Technical Specification changes. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not alter how any structure, system, or component functions. There will be no effect on equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request does not impact the probability of an

accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The only accidents possible due to failure of the steam generator snubbers to operate properly is increased stresses on both the MS and RCS piping attached to the steam generator due to either additional constraint in the case of premature lockup, or lack of proper constraint in the case of failure to lock-up under dynamic loading. Since the worst case scenario of such a failure would be the initiation of a LOCA, which is currently evaluated in the SAR [safety analysis report], there is no possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will allow use of the preferred approach to snubber surveillance which is in effect for the balance of Millstone Unit No. 2 snubbers. The steam generator snubbers have been previously exempt from the standard approach to snubber surveillance due to the difficulty previously encountered in testing these large and inaccessible components. Given the reliability of these snubbers is not expected to change in that the same requirements as for all other hydraulic snubbers will now consistently be met, there is no significant reduction in a margin of safety. The proposed changes will not alter any of the assumptions used in the accident analysis, nor will they cause any safety system parameters to exceed their acceptance limit. The proposed changes will not affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed changes will update the list of documents describing the analytical methods used to determine the core operating limits, specified in Technical Specification 6.9.1.8b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change in document 1 of Technical Specification 6.9.1.8b is made to provide the most recent, Nuclear Regulatory Commission (NRC) approved, methodology description and benchmarking results of the reactor analysis system used in the core neutronics analysis of cycle 14 and beyond. This change has no impact on plant equipment operation. Since the change only affects the neutronics analysis of the core, it cannot affect the likelihood or consequences of accidents. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change in document 8 of Technical Specification 6.9.1.8b is made to include the most recent, NRC approved, Emergency Core Cooling System (ECCS) model used in Large Break Loss of Coolant Accident (LBLOCA) applications. This model contains resolution of the deficiencies reported under 10 CFR 50.46(a) in a letter dated May 20, 1999. The use of the revised methodology also constitutes an improvement over the previous methodology. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes in document 4 of Technical Specification 6.9.1.8b are administrative in nature. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in document 1 of Technical Specification 6.9.1.8b is made to provide the most recent, NRC approved, methodology description and benchmarking results of the reactor analysis system used in the neutronics analysis of cycle 14 and beyond. The proposed change in document 1 of Technical Specification 6.9.1.8b will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. It does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated.

The proposed change in the documents in number 8 of Technical Specification 6.9.1.8b is made to include the most recent, NRC approved, ECCS model used in LBLOCA applications. The proposed change in document 8 of Technical Specification 6.9.1.8b will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. It does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated.

The proposed changes in document 4 of Technical Specification 6.9.1.8b are administrative in nature. These changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated.

These changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change in document 1 of Technical Specification 6.9.1.8b is made to provide the most recent, NRC approved, methodology description and benchmarking results of the reactor analysis system used in the neutronics analysis of cycle 14 and beyond. It has no impact on plant equipment operation. The proposed change in document 8 of Technical Specification 6.9.1.8b is made to include the most recent, NRC approved, ECCS model used in LBLOCA applications. This model contains resolution of the deficiencies reported under 10 CFR 50.46(a) in a letter dated May 20, 1999. The use of the revised methodology still provides a conservative simulation of the LBLOCA and conservative core neutronics analysis. The use of the revised methodology also constitutes an improvement over the previous methodology. The new documents will clearly identify the approved Siemens Topical Reports applicable to Millstone Unit No. 2 and will ensure that methodology changes will be identified and submitted to the NRC for approval, as required. The proposed changes in document 4 of Technical Specification 6.9.1.8b are administrative in nature. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 6, 1999.

Description of amendment request: The proposed changes will modify the Technical Specification (TS) surveillance requirements associated with ensuring a limited number of charging and high pressure safety injection pumps are capable of injecting into the Reactor Coolant System when the plant is shutdown. In addition, the TS Bases will be modified to address these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modifications to the surveillance requirements (SRs) associated with Technical Specifications 3.1.2.3, 3.1.2.4, and 3.4.9.3 will remove information that specifies the methods to be used to perform the associated SRs. These SRs verify the maximum number of charging and high pressure safety injection (HPSI) pumps capable of injecting into the RCS [Reactor Coolant System] when the plant is shut down. This information will be transferred to the associated Bases. Additional methods associated with the charging pumps, which are technically equivalent to the current method, will be included in the Bases change. This will not change the requirement to verify that the associated pumps are not capable of injecting into the RCS when the plant is shut down.

The proposed changes to the Technical Specifications and Bases will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification and Bases changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not significantly alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed modifications to the surveillance requirements associated with Technical Specifications 3.1.2.3, 3.1.2.4, and 3.4.9.3 will remove information that specifies the methods to be used to perform the associated surveillance requirements. This will not change the requirement to verify that the associated pumps are not capable of injecting into the RCS when the plant is shut down.

The proposed changes to the Technical Specifications and Bases will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 7, 1999.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) are associated with the action requirement to suspend positive reactivity additions. These changes will remove the action requirement to suspend positive reactivity additions from TS 3.4.2.1, ''Reactor Coolant System—Safety Valves,'' 3.4.2.2, ''Reactor Coolant System—Safety Valves,'' and 3.7.6.1, ''Plant Systems—Control Room Emergency Ventilation System,'' and provide guidance in the Bases for other TSs that require the suspension of positive reactivity addition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications 3.4.2.1 and 3.4.2.2

The proposed changes to Technical Specifications 3.4.2.1 and 3.4.2.2, which address the pressurizer code safety valves in Modes 1 through 4, will combine these two specifications into one Technical Specification, 3.4.2. The slight reduction in the Mode of Applicability for the new Technical Specification, to be consistent with the Mode of Applicability for Technical Specification 3.4.9.3, which addresses the Low Temperature Overpressure Protection (LTOP) System, is too small to result in a change in plant operations. The LCO [limiting condition for operation] for the pressurizer code safety valves in Mode 4 with all Reactor Coolant System (RCS) cold leg temperatures > 275 °F will be expanded to require all pressurizer code safety valves to be operable, instead of at least one pressurizer code safety valve. This more restrictive change will require additional accident mitigation equipment to be operable. The proposed action requirements for plant operation in Modes 1, 2, and 3 have been expanded to require the plant to be in Mode 3 within 6 hours and in Mode 4 within the following 6 hours, instead of just Mode 4 within 12 hours. In addition, the action requirements will be modified to address 2 inoperable pressurizer code safety valves. An entry into Technical Specification 3.0.3 will no longer be necessary if both pressurizer code safety valves are inoperable. In addition, the proposed action requirements are more restrictive than the action requirements of Technical Specification 3.0.3. The proposed action requirements for Mode 4 with all RCS cold leg temperatures > 275 °F are different. The new Mode 4 action requirements will direct the plant to be cooled down to the applicability of Technical Specification 3.4.9.3, which will require the LTOP System to be placed in service to provide RCS overpressure protection. The proposed action requirements will ensure that the plant is placed in a condition where sufficient accident mitigation equipment will be available.

The proposed Technical Specification, 3.4.2, will ensure the RCS has adequate overpressure protection when operating above 275 °F. If the pressurizer code safety valves are not operable, the proposed Technical Specification will require a plant shutdown that will place the plant within the capability of the LTOP System to provide RCS overpressure protection. The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.7.6.1

The proposed change to Technical Specification 3.7.6.1 will remove the requirement to suspend positive reactivity additions if both control room ventilation trains are inoperable in Modes 5 and 6. The Control Room Ventilation System is required

to be operable in Modes 5 and 6 to protect the control room operators from an event that results in a rapid release of radioactivity, such as a fuel handling accident. In Modes 5 and 6, the positive reactivity addition methods of concern are boron dilution, RCS cooldown (negative isothermal temperature coefficient), and control rod withdrawal. Positive reactivity additions associated with fuel handling are already addressed by the additional action requirement in this specification to suspend core alterations. Control rod withdrawal is prohibited by Technical Specification 3.1.3.7, unless the RCS boron concentration is greater than or equal to the refueling boron concentration of Technical Specification 3.9.1. If the RCS is borated to the refueling concentration, sufficient negative reactivity has been added to compensate for the positive reactivity addition associated with control rod withdrawal in Modes 5 and 6. Therefore, only boron dilution and RCS temperature changes are of concern. However, both of these methods will result in slow changes to core reactivity in Modes 5 and 6, and since adequate shutdown margin (SDM) will have been established prior to entering Mode 5 or 6 (Technical Specifications 3.1.1.2 and 3.9.1), neither method will result in a rapid release of radioactivity. Therefore, the requirement to suspend positive reactivity additions is not necessary for the protection of the control room operators.

The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed change can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not significantly alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to combine Technical Specifications 3.4.2.1 and 3.4.2.2 into a new Technical Specification, 3.4.2, will result in a slight reduction in the Mode of Applicability for the new Technical Specification, will require both pressurizer code safety valves to be operable in Mode 4 with all RCS cold leg temperatures > 275 °F, will modify the action requirements in Modes 1, 2, and 3 to add a requirement to be in Mode 3 within 6 hours and to address two inoperable pressurizer code safety valves, and will provide different action requirements for Mode 4 with all RCS cold leg temperatures > 275 °F. The reduction in Mode of Applicability is too small to adversely impact plant operations. Requiring both pressurizer code safety valves to be operable in Mode 4 with all RCS cold leg temperatures > 275 °F will provide additional accident mitigation equipment. The modified action requirement to be in Mode 3 within 6 hours will not change the requirement to be in Mode 4 within 12 hours. The action requirements added to address two inoperable pressurizer code safety valves are more restrictive than the action requirements of Technical Specification 3.0.3. The new Mode 4 action requirements will direct the plant to be cooled down to the applicability of Technical Specification 3.4.9.3, which will require the LTOP System to be placed in service to provide RCS overpressure protection. The proposed action requirements will ensure that the plant is placed in a condition where sufficient accident mitigation equipment will be available.

The proposed change to Technical Specification 3.7.6.1 will remove the requirement to suspend positive reactivity additions if both control room ventilation trains are inoperable in Modes 5 and 6. The Control Room Ventilation System is required to be operable in Modes 5 and 6 to protect the control room operators from an event that results in a rapid release of radioactivity, such as a fuel handling accident. The proposed change will only impact slow methods to change core reactivity, such as boron dilution and RCS temperature changes. Therefore, the action requirement to suspend positive reactivity additions is not necessary for the protection of the control room operators.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed change affects Technical Specification 4.0.5, ''Limiting Conditions for Operation and Surveillance Requirements'' by adding a biennial or 2-year surveillance interval and incorporating a required frequency for performing inservice testing activities of once per 731 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change amends Technical Specification Section 4.0.5.b by adding a biennial or 2 year surveillance to the existing list. This surveillance interval is included as part of the current Millstone Unit Nos. 2 and 3 Inservice Test (IST) surveillance program. Inclusion of this surveillance interval in the facility Technical Specifications clarifies the applicability of this surveillance interval and affords operational flexibility in the event a surveillance cannot be completed within the required interval.

The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed change can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The biennial surveillance relates to performing inservice testing of plant components. The possibility of a new or different kind of accident from any accident previously evaluated is not created because the proposed Technical Specification change does not introduce a new mode of plant operations and does not involve physical modifications to the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

There is no impact on the margin of safety as defined in the Technical Specifications. Performance of surveillance tests at regular intervals provides assurance of reliability and availability of accident mitigating equipment. The Technical Specifications provide the required frequency for performing surveillance testing. Adding a new surveillance frequency to the Technical Specifications will provide consistent yet acceptable flexibility in scheduling surveillance tests and provide additional assurance that testing will be performed in a timely manner.

The proposed change will have no adverse effect on plant operation or equipment

important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 29, 1999.

Description of amendment request: The requested changes would revise Technical Specification (TS) 3/4.6.6, ''Supplementary Leak Collection and Release System,'' (SLCRS), TS 3/4.7.7, ''Control Room Emergency Ventilation System,'' (CREVS), TS 3/4.7.9, ''Auxiliary Building Filter System,'' (ABFS), and 3/4.9.12, ''Fuel Building Exhaust System,'' (FBES), in response to Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The requested changes require testing of nuclear-grade activated charcoal to be conducted in accordance with American Society for Testing Materials (ASTM) D3803-1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' as recommended by GL 99–02.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve any Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed TS revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change modifies the TS to reference ASTM D3803–[19]89 for performing laboratory testing of nuclear-grade charcoal in ESF [Engineered Safeguards Features] filtration systems. The testing methodology associated with ASTM D3803–[19]89 provides more stringent requirements than what is currently employed. These more stringent requirements, along with a factor of safety of greater than or equal to two in regards to the charcoal efficiency assumed in the design bases dose analysis will not result in operations that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. There are no related modifications to any systems. The proposed change does not affect procedures governing plant operations. Therefore there is no significant increase in the probability [or consequences] of occurrence of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change modifies the TS to reference ASTM D3803–[19]89 for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems. The proposed change does not involve the physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. This change does impose different, more conservative testing requirements on the ESF filtration system charcoal samples. However there is no alteration in the methods employed to obtain the charcoal sample and testing is performed offsite. These changes are consistent with the safety analyses and licensing basis. Furthermore, the proposed changes do not introduce any new modes of plant operation, or alter any operational setpoints. Thus the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Involve a significant reduction in the margin of safety.

The proposed change modifies the TS to reference ASTM D3803–[19]89 for performing laboratory testing of nuclear-grade charcoal in ESF filtration systems. The imposition of the more conservative charcoal filter testing requirements associated with ASTM D3803–[19]89 along with a factor of safety of greater than or equal to two, in regards to the charcoal efficiency assumed in the design bases dose analysis has no impact on, nor decreases the margin of plant safety. The conservative nature of ASTM D3803–[19]89 is by definition, providing additional restrictions to enhance plant safety. This change maintains requirements within the safety analysis and licensing basis. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the TS affected by the proposed change.

As described above this TSCR [Technical Specification Change Request] does not impact the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, (LGS) Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 5, 1999.

Description of amendment request: The proposed changes will revise LGS Technical Specifications (TSs) to incorporate revised testing and acceptance criteria for the performance of laboratory analysis of safety-related nuclear-grade activated charcoal in response to Generic Letter (GL) 99–02. ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999. In addition, minor editorial changes are being proposed for wording consistency and to correct a typographical error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal samples from Reg. [Regulatory] Guide 1.52 to ASTM D3803–1989 in accordance with Generic Letter 99–02, and establishing a new methyl iodide penetration acceptance criteria does not involve any physical changes or modifications to the function or operation of any safety-related structure, system, or component. The new testing methodology will enable a more accurate, conservative and reliable determination of the charcoal decontamination efficiencies associated with the SGTS [Standby Gas Treatment System], RERS [Reactor Enclosure Recirculation System], and CREFAS [Control Room Emergency Fresh Air System] which will better assure that the assumed charcoal efficiencies credited in the licensed accident

analysis are adequately maintained. Implementing this change will only involve revisions to existing procedures.

The SGTS, RERS, and CREFAS are standby systems that are designed to mitigate the consequences of the analyzed accidents. No analyzed accident initiating events are impacted, no new accident initiators or new failure modes are created and the credited charcoal efficiency for each system in the licensed accident analyses is not changing as a result of the proposed changes. The ability of the SGTS, RERS, and CREFAS to perform all of their safety-related mitigation functions as designed will not be affected by the proposed changes. Furthermore, the change in the testing methodology and acceptance criteria will not result in increasing the dose rates currently calculated in the existing accident analyses.

In addition, the proposed minor editorial changes are administrative in nature and do not impact the operation, physical configuration, or function of plant equipment or systems. The proposed editorial changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal in accordance with Generic Letter 99–02, and establishing new methyl iodide penetration acceptance criteria is not an accident initiator, does not create any new failure modes, nor does it result in the occurrence of an accident. This change does not result in any physical plant modification and does not affect the safety-related function, assigned charcoal efficiency assumed in the accident analyses, or operation of the SGTS, RERS, and CREFAS. This change will only involve revisions to existing procedures.

In addition, the proposed minor editorial changes are administrative in nature and do not alter plant configuration, require that new equipment be installed, alter assumptions made about accidents previously evaluated, or impact the operation or function of plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The safety-related air cleaning units used in ESF [Engineered Safety Feature] ventilation systems reduce the potential onsite and offsite consequences of a radiological accident by adsorbing radioiodine. Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal samples from Reg. Guide 1.52 to ASTM D3803–1989 in accordance with Generic Letter 99–02, and the establishment of new methyl iodide penetration acceptance criteria does not increase the dose rates above what is currently calculated in the accident analyses.

In addition, the proposed minor editorial changes are administrative in nature and do not involve any physical changes to plant structures, systems or components (SCCs), or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed editorial changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions of operation, or design parameters for any SSC. The proposed editorial changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting any accident analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 17, 1999.

Description of amendment request: The proposed changes will revise the Peach Bottom Units 2 and 3 Technical Specifications (TSs) Section 5.5.7.c., Ventilation Filter Testing Program (VFTP), in accordance with Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' This TS change will (1) specify that the laboratory testing for methyl iodide penetration be performed referencing ASTM D3803–1989 at a temperature of 30 °C (86 °F), and (2) revise the acceptance criteria for methyl iodide penetration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear grade activated charcoal samples from RG [Regulatory Guide] 1.52 to ASTM [American Society for Testing and Materials] D3803–1989 and the establishment of new methyl iodide penetration acceptance criteria and test temperature in accordance with Generic Letter 99–02, do not involve any changes or modifications to the function or operation of any safety related structure, system, or component. The new testing methodology enables a more accurate and conservative charcoal decontamination efficiency to be determined which better assures that the assumed charcoal efficiency credited in the licensed accident analysis is being adequately maintained. Implementing this change only involves revisions to existing procedures.

The SGTS [Standby Gas Treatment System] and MCREVS [Main Control Room Emergency Ventilation System] are standby systems that are designed to mitigate the consequences of the analyzed accidents. No analyzed accident initiating events are impacted, no new accident initiators or new failure modes are created and the credited charcoal efficiency for each system in the licensed accident analyses is not changing. The change in laboratory testing methodology does not degrade the ability of these systems to perform all of their safety related mitigation functions as designed.

Therefore, the proposed changes described above do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the methodology for the performance of the laboratory testing of nuclear grade activated charcoal in accordance with Generic Letter 99–02 and establishing new methyl iodide penetration acceptance criteria is not an accident initiator, does not create any new failure modes, nor does it result in the occurrence of an accident. This change does not result in any physical plant modification and does not affect the safety related function, charcoal efficiency, or operation of the SGTS or MCREVS. This change only involves revisions to existing procedures to comply with NRC guidance from GL 99–02.

Therefore, the possibility of a new or different kind of accident than previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The safety related air cleaning units used in ESF [Engineered Safety Feature] ventilation systems reduce the potential onsite and offsite consequences of a radiological accident by absorbing radioiodine. Changing the methodology for the performance of the laboratory testing of nuclear-grade activated charcoal samples from RG 1.52 to ASTM D3803–1989 in accordance with Generic Letter 99–02, and the establishment of new methyl iodide penetration acceptance criteria does not increase the dose rates above what is currently calculated in the accident analyses.

Therefore, the above change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 16, 1999.

Description of amendment request: The proposed amendment would revise the Trojan Nuclear Plant (TNP) Permanently Defueled Technical Specifications by removing Figure 4.1–1, ''Site and Exclusion Area Boundaries,'' from Section 4.0, ''Design Features,'' and incorporate the applicable portion of this figure in the Trojan Nuclear Plant Defueled Safety Analysis Report. Other associated administrative changes resulting from the deletion of Figure 4.1–1, as well as an editorial change to the table of contents, are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment consists of changes that are administrative and/or editorial in nature, in that the physical and operational characteristics of the TNP site are unchanged. As such, the requested amendment does not in any way affect systems, structures, or components that could initiate or be required to mitigate the consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested license amendment consists of changes that are administrative and/or editorial in nature, in that the physical and operational characteristics of the TNP site are unchanged. As such, the requested amendment does not affect systems, structures, or components in any way not previously evaluated, and no new or different failure modes will be created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The requested license amendment consists of changes that are administrative and/or editorial in nature, in that the physical and operational characteristics of the TNP site are unchanged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas R. Nichols, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 27, 1999.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 4.6.2.2.b, ''Suppression Pool Spray,'' and 4.6.2.3.b, ''Suppression Pool Cooling,'' to modify the acceptance criteria associated with flow rate testing of the Residual Heat Removal (RHR) system pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The RHR system will continue to function as designed. The RHR system is designed to mitigate the consequences of an accident, and therefore, cannot contribute to the initiation of any accident. The proposed TS surveillance requirement changes implement testing methods that more appropriately control and reflect RHR operation and establish acceptance criteria, which ensure that Hope Creek's licensing and design basis assumptions are met. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the RHR system is operated is not affected by these proposed changes. The proposed surveillance requirement acceptance criteria ensure that the RHR safety functions will be accomplished. Therefore, the proposed TS changes would not result in the increase of the consequences of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the RHR system is not changed from that currently described in Hope Creek's licensing basis. The RHR system will continue to function as designed to mitigate the consequences of an accident. Implementing the proposed changes does not result in plant operation in a configuration that would create a different type of malfunction to the RHR system than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in Hope Creek's licensing basis regarding the safety related functions of this system.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal would implement testing methods that adequately demonstrate RHR pump capability and establish acceptance criteria consistent with Hope Creek's licensing basis. The ability of RHR to perform its safety functions is not adversely affected by these proposed changes. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 29, 1999.

Description of amendment request: The proposed amendments would revise the Salem Nuclear Generating Station Technical Specification requirements for instrumentation in the reactor trip system by adding tolerances to certain setpoint values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents of concern affected by the over-temperature or over-power delta temperature [trip signal] which have been evaluated are unaffected by the proposed editorial changes thus the changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The changes proposed are editorial in nature and do not alter physical configuration, replace or modify existing equipment, affect operating practices or create any new or different accident precursors which could impact on the accident analysis. Thus there is no possibility of a new or different kind of accident as a result of the proposed changes.

3. Does not involve a significant reduction in a margin of safety.

No margin of safety will be reduced by the proposed changes. The proposed changes do not adversely affect the ability of the trip systems to operate when called upon. Rather, these changes should result in clarity regarding the proper calibration of the trip instrumentation and therefore the margin of safety is preserved for those events in which there is a dependence upon an over-temperature or over-power delta temperature trip signal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 30, 1999.

Description of amendment request: The proposed amendment would allow the Rochester Gas and Electric Corporation to revise Sections 5.5.10 (a.3), (c.5), and (d.3) of the Ginna Station Improved Technical Specifications (ITS) to provide a reference to American Society for Testing and Materials (ASTM) Standard Procedure D3803–1989 as the procedure for performing laboratory testing of charcoal adsorbers that are installed in the Ginna Control Room Emergency Air Treatment System (CREATS), Containment Post-Accident Sampling System (CPASS), and Spent Fuel Pool Charcoal Absorber System (SFPCAS). These charcoal adsorbers for the CREATS and CPASS are installed for the purpose of reducing the levels of radioactive iodide species released to the containment and control room during a postulated design basis, while the charcoal adsorbers in the SFPCAS are installed for reducing the levels of radioactive iodide species released to the auxiliary building during a postulated fuel handling accident. The changes to ITS Sections (a.3), (c.5), and (d.3) will also provide a specific test temperature and humidity level for performing the testing of the charcoal adsorbers, and to increase the allowable penetration of methyl iodide to these systems from 10% to 14.5%. The requests for the changes are consistent with the staff's position stated in NRC Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. With respect to the more restrictive proposals associated with providing a reference to ASTM D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' and providing a specific test temperature and relative humidity for testing the charcoal adsorbers, the proposed changes do not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes add a reference to the latest approved test protocol and provide for specific test conditions. This does not increase the probability of an accident previously evaluated since the tests are of themselves not an accident initiator. The proposed changes are in accordance with NUREG–1431 guidance and provide a higher assurance of the ability of the charcoal adsorbers to perform as assumed in the accident analysis. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes add specific details of charcoal adsorber testing and do not of themselves involve a physical alteration of the plant (*ie.* no new or different type of equipment will be added to perform the required testing) or changes in the methods governing normal plant operation. The changes only involve implementing currently approved test methodology. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes only add conservatism in the test requirements for the charcoal adsorbers credited in the accident analysis. ASTM D3803–1989 is considered to be the most accurate and most realistic protocol for testing charcoal in ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. Therefore, this change does not involve a significant reduction in a margin of safety.

With respect to the less restrictive proposal to increase the allowable test limit for methyl iodide penetration of charcoal adsorbers, the changes do not involve a significant hazards consideration as discussed below:

(4) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes revise the acceptance criteria for the allowed penetration of methyl iodide during the testing of charcoal adsorbers in the plant ventilation systems. This does not increase the probability of an accident previously evaluated since the tests are of themselves not an accident initiator. Because ASTM D3803–1989 is a more accurate and demanding test than older tests this new protocol will allow the use a safety factor of 2 for determining the acceptance criteria for charcoal filter efficiency. The new acceptance criteria continue to ensure that the efficiency assumed in the accident analysis is still valid. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes of revising charcoal adsorber testing acceptance criteria do not of themselves involve a physical alteration of the plant (*ie.* no new or different type of equipment will be added to perform the required testing) or changes in the methods governing normal plant operation. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes only revise the test acceptance criteria of charcoal adsorbers as the result of implementing testing in accordance with ASTM D3803–1989. ASTM D3803–1989 is considered to be the most accurate and most realistic protocol for testing charcoal in ventilation systems because it offers the greatest assurance of

accurately and consistently determining the capability of the charcoal. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the preceding information, the Rochester Gas and Electric Corporation determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Marsha Gamberoni, Acting.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: September 30, 1999 (TS 98–005).

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant Unit 1 Technical Specifications (TS) analytical methods for core operating limits to implement an analysis supporting a more negative moderator temperature coefficient (MTC) for the end of cycle condition. This alternate methodology is based on a Westinghouse Electric Company analysis documented in reports WCAP–15088–P, Revision 1 (proprietary), ''Safety Evaluation Supporting a More Negative EOL Moderator Temperature Coefficient Technical Specification for the Watts Bar Nuclear plant,'' and WCAP–15099–P, Revision 1 (non-proprietary, same title).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The more negative EOL [end-of-life] MTC does not increase the probability of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. No new performance requirements are being imposed on any system or component such that any design criteria will be exceeded. The conservative MDC [moderator density coefficient] assumption in the current analyses of record has been confirmed to remain bounding for the more negative proposed TS values. Therefore, no change in the modeling of the accident analysis conditions or response is necessary in order to implement this change. The consequences of an accident previously evaluated in the FSAR are not increased due to the more negative EOL MTC. The dose predictions presented in the FSAR remain valid such that no more severe consequences will result.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The more negative EOL MTC does not create the possibility of an accident which is different than any already evaluated in the FSAR. No new failure modes have been defined for any system or component nor has any new limiting single failure been identified. Conservative assumptions for MDC have already been modeled in the FSAR analyses and it has been determined that the more negative MTC values to be implemented in the TS will continue to be bounded by these assumptions.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The evaluation of the more negative EOL MTC has taken into account the applicable technical specifications and has bounded the conditions under which the specifications permit operation. The applicable technical specification is Section 5.9.5.b which lists methods approved by the NRC for use in determining the core operating limits. The values of the LCO [limiting condition for operation] and SRs [surveillance requirements] are located in the COLR [core operating limits report]. The analyses which support these technical specifications have been evaluated. The results as presented in the FSAR remain bounding for the more negative EOL MTC. Therefore, the margin of safety, as defined in the bases to these technical specifications, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 21, 1999.

Description of amendment request: This proposed change revises the control rod block requirements consistent with the BWR/4 Standard Technical Specifications. Some functions are proposed to be relocated to the Technical Requirements Manual, the requirements for the retained functions are clarified, and two functions are added to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocated functions are not assumed as initial conditions for, nor are they credited in the mitigation of, any design basis accident or transient previously evaluated. Since reactor operation with these revised and relocated Specifications is fundamentally unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events nor assumed mitigation of design basis accident or transient events.

More stringent and purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes affects any parameters or conditions that could contribute to the initiation of an accident. No new accident modes are created since the manner in which the plant is operated is unchanged. No safety-related equipment or safety functions are altered as a result of these changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation, and there are no changes being made to safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. Since the changes have no effect on any safety analysis assumption or initial condition, the margins of safety in the safety analyses are maintained. In addition, neither administrative changes with no technical impact, nor the imposition of more stringent requirements have a negative impact on a margin of safety. Therefore, the proposed

changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas.

Date of amendment request: December 15, 1999 (ET 99–0050).

Description of amendment request: The proposed amendment would modify the Improved Technical Specifications (ITSs) that were issued in Amendment No. 123 on March 31, 1999, and implemented on December 18, 1999. The proposed changes would expand the region of acceptable seal injection flow in Figure 3.5.5–1 of ITS 3.5.5 and provide the following 10 editorial changes: (1) delete the redundant ''%'' sign in the allowable value for function 4 in Table 3.3.1–1 on reactor trip system instrumentation, (2) delete the extra spacing in the description of function 20 in Table 3.3.1–1, (3) insert periods at the end of the text for Conditions M and N in the actions for limiting condition for operation (LCO) 3.3.2 on engineered safety features actuation system instrumentation (ESFASI), (4) spell ''requirements'' correctly in function 5.c of Table 3.3.2–1 for ESFASI, (5) delete the unneeded ''SR 3.3.2.6'' from the surveillance requirements column for Function 7.a in Table 3.3.2–1, (6) align the wording ''Coincident with Safety Injection'' with the title of Function 7.b in Table 3.3.2–1, (7) align the data in the 4 columns of Table 3.3.7–1, CREVS [control room emergency ventilation system] Actuation Instrumentation, for Function 3 with the first line of the title of the function, (8) align the specified completion time in Condition B of the actions for LCO 3.7.1 for main steam safety valves with text for the Required Action B.2, (9) add the acronym ''EES'' to Emergency Exhaust System in the table of contents and use the acronym in the upper right-hand-corner of the 4 ITS pages for LCO 3.7.13 on the emergency exhaust system, and (10) uncapitalize the word ''Associated'' in Condition B of the actions for LCO 3.8.4 on DC sources—operating because it should not be capitalized. The licensee would also add text to the Bases to the applicable safety analyses for the seal injection flow of LCO 3.5.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The restriction on RCP [reactor coolant pump] seal injection flow limits the amount of ECCS [emergency core cooling system] flow that would be diverted from the injection path following an accident. This limit is based on safety analysis assumptions that are required because RCP seal injection flow is not isolated during SI [safety injection]. The intent of the LCO 3.5.5 limit on seal injection flow is to make sure that flow through the RCP seal water injection line is low enough to ensure that sufficient centrifugal charging pump injection flow is directed to the RCS [reactor coolant system] via the injection points. The expansion of the Acceptable Range for the flow limits does not impact the assumed ECCS flow that would be available for injection into the RCS following an accident.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. Since the change continues to ensure 100 percent of the assumed charging flow is available, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed editorial changes involve corrections to the improved Technical Specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new of different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose any new or eliminate any old requirements. The expansion of the Acceptable Range for the [seal injection] flow limits does not impact the assumed ECCS flow that would be available for injection into the RCS following an accident.

The proposed editorial changes involve corrections to the improved Technical Specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications.

Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change [for seal injection flow] does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The expansion of the Acceptable Range for the flow limits does not impact the assumed ECCS flow that would be available for injection into the RCS following an accident.

The proposed editorial changes involve corrections to the improved Technical Specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and

page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket, Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 22, 1999.

Brief description of amendments: The amendments would delete the Donald C. Cook (D.C. Cook), Unit 1 and 2, Technical Specification (TS) 5.4.2, ''Reactor Coolant System Volume,'' because the information regarding the reactor coolant system (RCS) is not required by TS Section 5.0, ''Design Features,'' for compliance with 10 CFR 50.36(c)(4). Changes to the RCS volume information are included in the D.C. Cook Updated Final Safety Analyses Report, and are controlled in accordance with 10 CFR 50.59.

Date of publication of individual notice in ***Federal Register***: January 13, 1999 (65 FR 2199).

Expiration date of individual notice: February 14, 2000.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, and October 14, 1999.

Description of amendment request: The amendment converts the current Technical Specifications (TSs) for the James A. FitzPatrick Nuclear Power Plant, to a set of improved TSs based upon NUREG–1433, ''Standard Technical Specifications for General Electric Plants BWR/4'' Revision 1 dated April 1995.

Date of publication of individual notice in **Federal Register**: November 8, 1999 (64 FR 60854).

Expiration date of individual notice: December 8, 1999.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Co., LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 11, 1999.

Brief description of amendment: The amendment made various title changes to the plant organization.

Date of issuance: January 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 219.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: July 14, 1999 (64 FR 38027).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: October 2, 1998, as supplemented by letters dated April 13, 1999, and September 15, 1999. Information in Commonwealth Edison correspondence dated July 8, 1999, and August 30, 1999, was also considered during the review of the amendments.

Brief description of amendments: The amendments replace the custom operational technical specifications with a set of permanently defueled technical specifications that reflect the permanently shutdown and defueled status of the Zion Nuclear Power Station, Units 1 and 2. The amendments also delete certain license conditions from the operating licenses that are no longer applicable to the facility in its permanently shutdown and defueled condition. Information supplied in Commonwealth Edison letters dated July 8, 1999, August 30, 1999, and September 15, 1999, provided clarifying information and did not expand the scope of the original **Federal Register** notice dated June 2, 1999, and did not change the staff's proposed no significant hazards finding.

Date of issuance: December 30, 1999.

Effective date: December 30, 1999.

Amendment Nos.: Unit 1—180; Unit 2—167.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications and the operating licenses.

Date of initial notice in ***Federal Register***: June 2, 1999 (64 FR 29709).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1999.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: September 10, 1999 (NRC–99–0072), as supplemented November 19, 1999 (NRC–99–0107).

Brief description of amendment: The amendment revises the Technical Specification surveillance requirements for the Division I 130/260-volt dc battery to accommodate the design of the replacement battery.

Date of issuance: January 12, 2000.

Effective date: As of the date of issuance and shall be implemented prior to the startup from the seventh refueling outage.

Amendment No.: 136.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: November 3, 1999 (64 FR 59800). The November 19, 1999, letter provided clarifying information that was within

the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 16, 1999, supplemented November 3, 1999.

Brief description of amendments: The amendments revise Section 3.8.4, ''DC Sources—Operating'' of the Technical Specifications. Specifically, the amendments modify Surveillance Requirements (SRs) 3.8.4.8 and 3.8.4.9 and the associated Bases SR 3.8.4.8 and 3.8.4.9 to allow testing of the direct current (dc) channel batteries with the units on line. The change to SR 3.8.4.8 would also prohibit the diesel generator batteries from being service tested while the units are on line.

Date of issuance: January 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment Nos.: Unit 1–183; Unit 2–175.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 20, 1999 (64 FR 56529). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 7, 2000.

No significant hazards consideration comments received: No.

First Energy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: September 9, 1999.

Brief description of amendment: This amendment revised the Perry Nuclear Power Plant Environmental Protection Plan by eliminating the requirement to sample Lake Erie sediment in the Perry and Eastlake Plant area for Corbicula, since Corbicula and zebra mussels have already been identified, and control and treatment plans have been implemented which are effective for both species.

Date of issuance: January 5, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 110.

Facility Operating License No. NPF–58: This amendment revised the Environmental Protection Plan.

Date of initial notice in ***Federal Register***: November 3, 1999 (64 FR 59802). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: November 3, 1999.

Brief description of amendments: The amendments allow use of fuel rods with ZIRLO cladding, specify an alternate methodology to determine the integral fuel burnable absorber (IFBA) requirements for Westinghouse fuel assemblies stored in the new fuel storage racks, and delete the designation of the fuel assembly types allowed in the spent fuel storage racks and the new fuel storage racks.

Date of issuance: January 6, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 239 and 220.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 1, 1999 (64 FR 67335).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1998, as supplemented by letters dated March 25, September 29, and November 3, 1999.

Brief description of amendments: The amendments change the way passive failures in the auxiliary saltwater (ASW) and component cooling water (CCW) systems are mitigated during the long-term recovery period following a loss-of-coolant accident (LOCA). Specifically, plant procedures will no longer require ASW and CCW system train separation after the transfer to hot leg recirculation following a LOCA.

Date of issuance: January 13, 2000.

Effective date: January 13, 2000, and shall be implemented in the next periodic update to the FSAR Update in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 1—138, Unit 2—138.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Final Safety Analysis Report Update.

Date of initial notice in ***Federal Register***: October 7, 1998 (63 FR 53953).

The supplemental letters dated March 25, September 29, and November 3, 1999, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2000.

No significant hazards consideration comments received: No.

PP&L, Inc., Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: March 12, 1999, as supplemented by letter dated November 1, 1999.

Brief description of amendment: This amendment revised the Minimum Critical Power Ratio safety limits in TS Section 2.1.1.2 and modified the references in TS Section 5.6.5 of a critical power correlation applicable to Siemens Power Corporation Atrium-10 fuel.

Date of issuance: December 30, 1999.

Effective date: As of date of issuance and shall be implemented upon startup from the Unit 1 eleventh refueling and inspection outage currently scheduled for spring 2000.

Amendment No.: 186.

Facility Operating License No. NPF–14: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 7, 1999 (64 FR 17029).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 1, 1998, as supplemented by your letters of April 21, July 19, October 18, and November 11, 1999.

Brief Description of amendments: The proposed amendments would revise the Technical Specifications to reflect replacing the current Model 51 steam generators with Westinghouse Model

54F steam generators. The replacement program includes re-analyzing and evaluating loss-of-coolant-accident (LOCA) and non-LOCA mass and energy releases, containment and sub-compartment pressure and temperature responses, dose analyses, and the effects on nuclear steam supply and balance of plant systems.

Date of issuance: December 29, 1999.

Effective date: As of the date of issuance and shall be implemented prior to Unit 1 entering Mode 5 for Cycle 17 (Spring 2000) and prior to Unit 2 entering Mode 5 for Cycle 15 (Spring 2001).

Amendment Nos.: Unit 1–147; Unit–238.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Improved Technical Specifications.

Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56533). The supplemental letters dated October 18, and November 11, 1999, provided clarifying information that did not change the initial proposed no significant hazards consideration determinations.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1999.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 22, 1998, as supplemented by letters dated June 16, October 21 and 27, November 17, and December 9, 1999.

Brief description of amendments: The amendments revised the Technical Specifications to reflect the steam generator water level low-low trip setpoint differences between the existing Model E and the replacement Model Delta-94 steam generators for the reactor trip system and the engineered safety features actuation system instrumentation.

Date of issuance: December 29, 1999.

Effective date: December 29, 1999, to be implemented following replacement of Unit 1 Model E steam generators with Model Delta-94 steam generators and prior to entry into Operational Mode 3.

Amendment Nos.: Unit 1—120; Unit 2—108.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 9, 1998 (63 FR 48268).

The June 16, October 21 and 27, November 17, and December 9, 1999, supplements provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1999.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of January 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1732 Filed 1–25–00; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster [#3232]]

State of Kentucky

As a result of the President's major disaster declaration on January 10, 2000, I find that Crittenden, Daviess, and Webster Counties in the State of Kentucky constitute a disaster area due to damages caused by tornadoes, severe storms, torrential rains, and flash flooding that occurred on January 3–4, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 10, 2000 and for economic injury until the close of business on October 10, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Caldwell, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Ohio, and Union Counties in Kentucky; Hardin County, Illinois; and Spencer and Warrick Counties in Indiana.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—7.500%

Homeowners without credit available elsewhere—3.750%

Businesses with credit available elsewhere—8.000%

Businesses and non-profit organizations without credit available elsewhere—4.000%

Others (including non-profit organizations) with credit available elsewhere—6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%

The number assigned to this disaster for physical damage is 323212, and for economic injury the numbers are 9G4100 for Kentucky, 9G4200 for Illinois, and 9G4300 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–1804 Filed 1–25–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Economic Injury Disaster #9G20

State of Washington

King, Pierce, Snohomish, Thurston, and Whatcom Counties and the contigous counties of Chelan, Grays Harbor, Island, Kitsap, Kittitas, Lewis, Mason, Okanogan, Skagit, and Yakima in the State of Washington constitute an economic injury disaster area due to the effects of the warm water current known as El Nino beginning in 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on September 22, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: Dec. 22, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 00–1805 Filed 1–25–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Compliance Criteria for 14 CFR 33.28, Aircraft Engines, Electrical and Electronic Engine Control Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) No. 33.28–1, Compliance Criteria for 14 CFR 33.28, Aircraft Engines, Electrical and Electronic Engine Control Systems.

DATES: Comments must be received on or before April 25, 2000.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Cosimo Bosco, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7118, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject Act may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This proposed AC provides guidance material for methods of complying with § 33.28, Electrical and Electronic Control (EEC) Systems. Initially, EEC technology was primarily applied to engines designed for large transport aircraft applications; the certification practice and implementation of § 33.28 was oriented toward these applications. When the use of EEC technology was limited to a small group of manufacturers, the information and guidance provided in the rule itself was adequate. However, with the proliferation of EEC controls, the need for additional advisory material has become evident in several recent engine certification programs. Additionally, industry representatives that design engines for applications other than large transport aircraft certificated under part 25 have questioned the criteria used to determine equivalence to the typical hydromechanical systems.

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

Issued in Burlington, Massachusetts, on January 14, 2000.

David A. Downey,

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

[FR Doc. 00–1818 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review, Chandler Municipal Airport, Chandler, Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces that it is reviewing a proposed Noise Compatibility Program submitted by the city of Chandler for the Chandler Municipal Airport (CHD), Chandler, Arizona under the provisions of Title I of the Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR Part 150 were in compliance with applicable requirements effective June 24, 1999. The proposed Noise Compatibility Program will be approved or disapproved on or before July 11, 2000.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is January 13, 2000. The public comment period ends March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007 World Way Postal Center, Los Angeles, CA, 90009–2007. Telephone Number (310) 725–3614. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Chandler Municipal Airport which will be approved or disapproved on or before July 11, 2000. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Chandler Municipal Airport, effective on January 13, 2000. It is requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a minimum of 180 days, will be completed on or before July 11, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable.

Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 615, Washington, DC 20591
Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, CA, 90261
Mr. Greg Chenoweth, Manager, Chandler Municipal Airport, 2380 South Stinson Way, Chandler, AZ 85249–1728

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on January 13, 2000.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 00–1819 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is schedule for February 8, 2000, from 10 am to 1 pm.

ADDRESSES: Federation Aviation Administration, 800 Independence Avenue, Room 810, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ad hoc ARAC meeting to be held Febuary 8, 2000, at the Federal Aviation Administration, 800 Independence Ave., Room 810, Washington, DC. The meeting is being held to approve items that had been expected to be voted on, but were not because of time constraints, at the December 1999 TAE meeting. At that time, TAE members agreed to hold an ad hoc meeting/teleconference for the expressed purpose of voting on only those items carried over from the December meeting.

The agenda will include the following actions:

• The Engine Harmonization Working Group (HWG) plans to request approval to submit a package to the FAA for formal legal and economic reviews. The package contains a proposed notice of rulemaking and associated advisory circulars that address type certificates for aircraft propellers, fatigue limits and evaluation, propeller control system, vibration and fatigue evaluation, safety analysis, and propeller certificate handbook.

• The Human Factors HWG will be requesting approval of its work plan on flight crew error/flight crew performance considerations in the flight deck certification process.

• The Electrical System HWG plans to request TAE approval to submit its report on electrical generating and distribution systems and electrical bonding and protection against lighting and static electricity.

• The Loads and Dynamics HWG plans to request approval of a proposed advisory circular addressing design dive speed.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by teleconference by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT** after Febuary 2. The public must make arrangements by February 4 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** 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 January 20, 2000.

Anthony F. Fazio,

Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–1817 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 27, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number —. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington,

D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). See CFR Part 232, Appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR Part 232, Appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 800 tags.

Average Time Per Response: 5 minutes per tag.

Estimated Total Annual Burden: 67 hours.

Status: Regular Review.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Abstract: Under 49 CFR Part 207, railroads are required to notify states of all designated railroad police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 30 railroads.

Frequency of Submission: On occasion.

Total Responses: 330 (30 rpts. + 300 rcds.)

Average Time Per Response: 5 hrs. p/rpt. + 10 min. p/rcd.

Estimated Total Annual Burden: 200 hours.

Status: Regular Review.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and ''for cause'' testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.7—Waivers	100,000 employees	2 letters	2 hours	4 hours	$116
219.9.(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hours	2 hours	$70
219.11(b)(2)—Gen'l conditions for chemical tests	450 Medical Fac.	1 document	15 minutes	15 minutes	$72
219.11 (g) & 219. 302 (c)(2)(ii)—Training-Alcohol and Drug.	5 railroads	5 programs	3 hours	15 hours	$525
—Training	200 railroads	250 training class	3 hours	750 hours	$26,250
230.23 (d)—Notice of Educ'l Materials to employees	200 railroads	200 sets-material	1 hour	200 hours	$7,000
—Notice to Employee Organizations	15 railroads	15 notices	1 hour	15 hours	$525
219.104/219.107/40.47—Removal from cov. Service	200 railroads	20 letters	1 hour	20 hours	$700
219.201 (c) Good Faith Determination	200 railroads	10 reports	30 minutes	5 hours	$175
219.203/207/209—Notifications by Phone to FRA	200 railroads	104 phone calls	10 minutes	17 hours	$595
219.205—Sample Collection and Handling	450 railroads	400 forms	15 minutes	100 hours	$2,900
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17 hours	$595
219.209 (b)—Narrative Response-refusal to provide sample.	450 railroads	0 reports	0 min./hr.	0 hours	$0
219.209 (c)—Records-Tests promptly admin	450 railroads	40 records	30 minutes	20 hours	$700
219.211 (b)—Analysis and follow-up MRO	450 railroads	8 reports	15 minutes	2 hours	$70
219.211 (e)—Written response from employees to FRA re: results of toxicological analysis.	200 employees	0 written response	0 min./hr.	0 hour	$0
219.211 (h)—Recordkeeping-Post Accident Toxicology Tests.	25 laboratories	N/A	N/A	N/A	N/A
219.211 (i)—Employees request for a retest of split blood and urine samples.	450 railroads	0 letters	0 min./hr.	0 hours	$0
219.213 (b)—Notice of Disqualification	450 railroads	0 notices	0 min./hr.	0 hours	$0
219.302 (f)—Tests not promptly administered	450 railroads	200 records	30 minutes	100 hours	$3,500
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	40 hours	200 hours	$7,000
219.405 (c) (1)—Report by Co-worker	200 railroads	200 reports	5 minutes	17 hours	$493
219.407—Alternate Policies	200 railroads	0 policy doc.	0 min./hr.	0 hours	$0
—Amendments/Revocations	200 railroads	0 amend/rev.	0 min./hr.	0 hour	$0
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	10 minutes	117 hours	$4,095
219.601 (a)—RR Random Drug Testing Programs	5 railroads	5 programs	1 hour	5 hours	$175
—Amendments	450 railroads	20 amendments	1 hour	20 hours	$700
219.601 (b)(4/; 219.601 (d)—Notices to Employees	450 railroads	4,000 notices	.5 minute	33 hours	$1,155
—New Railroads	5 railroads	5 notices	10 hours	50 hours	$1,750
—Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417 hours	$14,595
219.601 (b) (1)—Random Selection Proc.—Drug	450 railroads	5,400 documents	4 hours	21,600 hours	$756,000
219.603 (a)—Specimen Security-Notice By Employee Asking to be Excused-Urine Testing.	20,000 employees	200 excuse doc.	2 minutes	7 hours	$203
219.607—RR Random Alcohol Testing Programs	5 railroads	5 programs	1 hour	5 hours	$175
—Amendments to Approved Program	450 railroads	20 amendments	1 hour	20 hours	$700
219.607 (b) (1)—Random Selection Proc.—Alcohol	450 railroads	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
219.607 (c) (1)—Notice to Employees	450 railroads	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
—New Railroads	5 railroads	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
219.609—Notice by Employee to be Excused from Random Alcohol Testing.	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601	[1] 219.601
219.703 (a)&40.23-Specimen Security	450 railroads	40,000 forms	15 minutes	10,000 hours	$290,000
219.705 (c)—Approval to test for Additional Controlled Substances or alternative methods.	200 railroads	0 Requests	0 hours	0 hours	$0
219.707 9(c) (d)&40.33—Review by MRO of Urine Drug Testing Results/ Employee Notification.					
—Positive Drug Test Result	200 MROs	980 reports	2 hours	1,960 hours	$68,600
—Copies of Positive Test Results to Employees	450 railroads	980 tests	15 minutes	245 hours	$8,575
—Negative Test Results	450 railroads	48,020 letters	10 minutes	8,003 hours	$280,105
219.709—Retests-Written Request by Employee	450 railroads	10 letters	30 minutes	5 hours	$145

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.711 (c)&40.25 (f) (22) (ii)—Employee Consent	100,000 employees	60 letters	5 minutes	5 hours	$145
—Employee Release Form	450 railroads	12,863 letters	5 minutes	1,072 hours	$31,088
219.715&40.57/59/61—Alcohol Testing Procedures	[1] 219.703	[1] 219.703	[1] 219.703	[1] 219.703	[1] 219.703
40.65—Admin. of Confirmatory Tests	40,000 employees	20 tests	30 minutes	10 hours	$290
—Notice to Employee—Confirmation Test	200 railroads	200 notices	1 hour	200 hours	$7,000
—Submission of Test Result to Employer	200 railroads	20 tests	15 minutes	5 hours	$175
40.69—Inability to provide an adequate breath amount	200 railroads	10 cases	12 minutes	2 hours	$70
—Evaluation from Licensed Physician	200 railroads	10 cases	1 hour	10 hours	$290
—Written Statement from Physician	200 railroads	10 cases	1 hour	10 hours	$350
40.81—Availability/Disclosure of Alcohol Testing Information about Individual Employees.	200 railroads	60 letters	5 minutes	5 hours	$145
—Copies of Records—Breath Alcohol Test	40,000 employees	4 requests	30 minutes	2 hours	$64
40.83—Maintenance/Disclosure of Records concerning EBTs and BATs.	450 railroads	1,500 records	5 minutes	125 hours	$4,375
219.801—Reporting Alcohol Misuse Prevention Program Results in a Management Info. System					
—Alcohol Testing Management Info. System Data Collection Form.	53 railroads	25 forms	4 hours	100 hours	$3,500
—Easy Data Collection Form—No Alcohol Misuse	53 railroads	25 forms	2 hours	50 hours	$1,750
219.803—Reporting Drug Misuse Prev. Results in a Management Info. System					
—Drug Testing Management Info. Sys. Data Collection Form.	53 railroads	25 forms	4 hours	100 hours	$3,500
—Drug Testing Management Info. Sys.-Zero Positives—Data Collection Form.	53 railroads	25 forms	2 hours	50 hours	$1,750
219.901—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375 hours	$293,125
—Summary Report of Breath Alcohol/Drug Test	450 railroads	200 reports	2 hours	400 hours	$14,000
40.23(d)(2)(ii)—Written Instructions on Specimen Col	0 railroads	0 instructions	0 minutes	0 hours	$0
40.29 (a)(2)&(b)—Lab. Chain of Custody Proc.	25 laboratories	58,212 forms	15 minutes	14,553 hours	$422,037
40.31 (c) (1)—RR Blind Performance Test Proc.	25 laboratories	1,176 tests	1 minute	20 hours	$580
40.29 (g) (1)&(5)—Lab Test Result Rpts to MRO	25 laboratories	52,920 reports	30 minutes	26,460 hours	$767,340
40.29 (g) (6)—Lab/Monthly Stat Summary of Urinalysis	25 laboratories	2,400 reports	2 hours	4,800 hours	$139,200
40.29 (g) (8)&(m)—Recordkeeping—Labs.	25 laboratories	25 document files	240 hours	6,000 hours	$174,000
40.31(d) (6) Unsatisfactory Perf. Test Results	25 laboratories	2 reports	10 hours	20 hours	$580
40. 31(d) (7)&(8)—False Positive Error/Retesting	25 laboratories	1 report	50 hours	50 hours	$1,450
—False Positive on Blind Test Performance	25 laboratories	1 report	50 hours	50 hours	$1,450
40.33—Reporting/Review—Split Sample Test Results	200 railroads	18 letters	30 minutes	9 hours	$315
—Split Sample Failure to Reconfirm Drug Presence.	200 railroads	2 reports	30 minutes	1 hour	$35
40.37—Employee's Request for Access to Test Records.	100,000 employees	30 requests	30 minutes	15 hours	$435

[1] Incl. under.

Respondent Universe: 450 railroads.
Frequency of Submission: On occasion.
Total Responses: 357,251.
Estimated Total Annual Burden: 106,470 hours.
Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 C.F.R. 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on January 19, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–1800 Filed 1–25–00; 8:45 am]

BILLING CODE 4910–13–U

Federal Register

Wednesday,
January 26, 2000

Part II

Department of the Interior

Bureau of Reclamation

43 CFR Part 428

Information Requirements for Certain Farm Operations in Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations in Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds a new part to the Bureau of Reclamation's (Reclamation) regulations. This part supplements the Acreage Limitation Rules and Regulations, which implement the Reclamation Reform Act of 1982 (RRA). The final rule requires certain farm operators to submit RRA forms that describe the services they perform and the land they service. The rule also addresses the eligibility of certain formerly excess land held in trusts or by legal entities to receive nonfull-cost Reclamation irrigation water.

DATES: *Effective date:* This rule is effective October 1, 2000, except that §§ 428.9 and 428.10 are effective January 1, 2001.

APPLICABILITY DATES: For the applicability dates of this rule, see § 428.11.

ADDRESSES: A copy of all comments received on the proposed rule are available for review. To make arrangements to review those comments, please write to: Commissioner's Office, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, Attn: Erica Petacchi, or e-mail epetacchi@usbr.gov.

FOR FURTHER INFORMATION CONTACT: Steve Richardson, Chief of Staff, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, telephone (202) 208–4291.

SUPPLEMENTARY INFORMATION: This section provides the following information:

I. Background

This final rule supplements the Acreage Limitation Rules and Regulations, 43 CFR part 426, that govern implementation and administration of the RRA. The rule creates a separate Code of Federal Regulations part, 43 CFR part 428, addressing information requirements for certain farm operators and the eligibility of certain formerly excess land held in a trust or by a legal entity or any combination of trusts and legal entities to receive nonfull-cost Reclamation irrigation water.

This final rule was preceded by a proposed rule, which we published in the **Federal Register** (63 FR 64154, Nov. 18, 1998), and an Advance Notice of Proposed Rulemaking (ANPR), that we also published in the **Federal Register** (61 FR 66827, Dec. 18, 1996). When we finalized the Acreage Limitation Rules and Regulations (43 CFR part 426), we published the ANPR to address certain issues not dealt with in 43 CFR part 426. Please see the preambles to the ANPR and the proposed rule for a more complete history of this regulation.

II. Summary of the Final Rule as Adopted

The final rule will extend RRA certification and reporting forms requirements to farm operators who:

(1) Provide services to more than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity, or

(2) Provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres.

In addition, this part prevents former owners of excess land who sold or transferred the excess land at an approved price from receiving nonfull-cost water on that land if they are now farming it as farm operators. This provision only applies to formerly excess land held in trusts or by legal entities.

The provisions of 43 CFR part 426 not specifically addressed in this rule are unchanged.

Summary of Changes We Made Since the Proposed Rule

In response to comments, we renamed the term ''custom operator'' to ''custom service provider'' in the definitions section (43 CFR 428.3). In addition, we made it clear that a custom service provider is an individual or legal entity that provides one specialized, farm related service to the land in question.

In the section that establishes the RRA forms submittal requirement for farm operators (43 CFR 428.4), we narrowed the requirement for part owners of legal entities that are farm operators and must submit forms. The final rule now provides that indirect owners of legal entities that are farm operators meeting the criteria of section 428.4(a) must submit forms to us annually only if any of the land to which services are being provided by that legal entity is land that the part owner formerly owned as excess land and sold or transferred at an approved price. We have also clarified in this section that farm operators cannot use verification forms and that they are not subject to the landholding change requirements of 43 CFR 426.18.

We made a minor change in 428.9(a)(2) to add the words ''or transferred'' after ''sold'', so that these regulations are consistent with part 426.

Finally, we altered § 428.11 to provide for a later effective date than provided in the proposed rule; specifically the effective date will be January 1, 2001, rather than 2000. However, our intent is to make the rule effective for the 2001 water year in all districts. In § 428.11 we have included an October 1, 2000, effective date for those few districts whose water year commences before January 1, to accomplish that objective.

III. Public Involvement

We invited comments for a total of 120 days, and received comments from 33 sources: 16 from water/irrigation/drainage districts; 3 from public interest groups (including environmental and water users groups); 4 from members of the Congress; 4 from farms (or farm operators or custom service providers); 1 from a Federal government agency; 1 from a county government agency; 1 from a law firm; 2 from trusts (one trustee and one trust beneficiary); and 1 from a joint power authority. The commenters' letters came from the following States: 26 from California; 2 from Arizona; 2 from Colorado; 1 from Washington; 1 from Utah; and 1 from Virginia. We note that some of the letters had more than one signature, to reflect that more than one person or entity endorsed those comments.

The following section presents our responses to these public comments. We sorted these comments into subjects such as authority, trusts, the ANPR, environmental concerns, impacts and need for the rule. Then, we sorted comments that referred to specific sections of the proposed rule.

Public Comments and Responses on General Issues

The following section presents public comments on the proposed rules that are general in nature. This section includes comments on the ANPR, the Paperwork Reduction Act of 1995, trusts, impacts of the rule, authority, need for the rule, and National Environmental Policy Act (NEPA) issues.

General Issues

Comment: We believe that the adoption of westwide regulations to

address a limited problem is unwarranted.

Response: We believe that this issue has the potential to emerge westwide, and a regulation of general applicability is necessary to ensure consistent implementation and enforcement of the RRA.

Comment: The RRA did not create any farm size limitations, but continued to provide ''ownership'' limitation and extend the new concept of full-cost pricing to certain ''leased'' lands.

Response: While the RRA did not create farm size limits, it did tie eligibility of land for nonfull-cost irrigation water to acreage owned or leased. Congress also reaffirmed its policies that the benefits of irrigation water should be distributed widely and that excess landholdings should be broken up into family size farms. The regulations we finalize today will continue to implement the ownership and leasing limitations of the RRA by helping us identify farm operators of relatively large tracts of land. Once we identify them, we will require those farm operators to submit documentation concerning their farm operating arrangements to us for review, so we can determine if they are leases for acreage limitation purposes. If we determine a farm operating arrangement is a lease, we would apply retroactively the applicable nonfull-cost entitlement (the maximum acreage a landholder may irrigate with Reclamation irrigation water at the nonfull-cost rate; 43 CFR 426.2) to the landholding of that lessee (the farm operator). If the farm operator had been providing services to more acreage than the applicable nonfull-cost entitlement under his/her/its farm operating arrangements that are determined to be leases, the full-cost rate would apply.

Comment: The proposed rules would use a different standard of how to identify a lessee and who makes the most decisions regarding the farm. Any divergence from the economic-interest test causes uncertainty and poses a major risk to your ability to enforce reclamation law consistently.

Response: With the final rule, we are not diverging from the economic-interest test found in the Acreage Limitation Rules and Regulations, 43 CFR part 426. We are collecting information that will enable us to apply the economic-interest test more effectively.

Comment: The apparent intent of the regulation is to assist you in determining whether a lease exists. Your current enforcement capabilities enable the collection of information necessary to make this determination.

Response: As we explained in the proposed rule preamble, we currently do not have enough information to determine which farm operators should be reviewed to determine if their farm operating arrangements are leases for acreage limitation purposes. We have tried to collect this information from landholders in the past, but this approach is not effective. Requiring certain farm operators to submit RRA forms is the most effective means of obtaining the necessary information.

Comment: Why not just ask the landholders if you need information to determine (1) Who has use or possession of the land being farmed under a farm operating arrangement, (2) Who is responsible for payment of operating expenses, and (3) Who is entitled to receive the profits from the farming operation. You could get the information about who receives the economic benefit from the land and who has use and possession of the land from the current forms. Then, if that information shows that a party other than the owner, lessee, or sublessee qualifies as a lessee, you could require the named party to provide supplemental information.

Response: We have asked landholders to provide information concerning their operators and found that this approach is not effective in identifying farm operators providing services to more than 960 acres westwide. If we were to rely entirely on information provided by landholders, we would have to review many more farm operating arrangements than necessary, because we would not know until we actually contacted the farm operator and reviewed his/her/its farm operating arrangement if that farm operator was providing services to more than 960 acres. This would mean that districts would be required to contact all farm operators included on RRA forms to obtain their farm operating arrangements, most of which we would later determine were unnecessary to obtain due to the overall number of acres the farm operator was farming. The only alternatives are to either (1) Have certain farm operators submit RRA forms or (2) Collect information concerning farm operators identified on landholder forms westwide and collate the data to determine which farm operators are providing services to more than 960 acres. We have already tried the latter alternative and found it to be inefficient and ineffective. Rather than requiring districts to collect and submit to Reclamation information from all farm operators identified on RRA forms submitted by landholders, and then having to review all of that data, we believe it is in the best interest of all parties if we first narrow the field of farm operators that need to be reviewed. In order to effectively narrow the scope of the audit effort, we will require certain farm operators to submit RRA forms.

Comment: The proposed rule is flawed because it attempts to create an ''entity'' for purposes of reclamation law where none currently exists. There is no logical reason or purpose to create this new ''entity.'' There are plenty of established, recognized, and accepted legal forms of business ''entities'' already, such as sole proprietorships, partnerships, trusts, corporations, etc.

Response: In implementing these final rules, we will not be creating a new ''entity.'' We defined farm operators so that those affected by the regulations would know who must submit RRA farm operator forms.

Comment: The potential for evasion and abuse of the law remain, despite the good intentions in the proposed rule. You could make clear that any ''scheme or device'' employed to evade a requirement or limitation in the regulations will be punished in some way. The record of abuses of reclamation law in California is now so well documented that no one could fault you for taking steps to protect the taxpayers and clean up enforcement.

Response: We can only respond to what we actually find and can reasonably anticipate in the regulated community. We believe we have crafted a regulation to ensure that the acreage limitation provisions of the RRA are enforced properly. As a result we do not believe this suggested change is necessary.

Comment: We believe that the call for additional administrative discretion to address ''scheme or device'' violations would cause problems for water districts and water users who are in good faith trying to comply with the law.

Response: We believe we have crafted a regulation to ensure that the acreage limitation provisions of the RRA are enforced properly.

Comment: If you publish a final rule like the proposed one, please include a way for people to request formal, written rulings on their farm service contracts, similar to the ones you provide for trusts.

Response: Landholders and farm operators have always been welcome to submit farm operating agreements to us for review and a determination of whether the arrangement is a lease for acreage limitation purposes. This practice will continue; however, we have not included it in the regulation. The review procedure for trusts is also

not established in the Acreage Limitation Rules and Regulations.

Comment: The proposed rule does not work and should be withdrawn.

Response: We disagree. We have made several modifications to the final rule at the suggestion of commenters, and we believe that the rule will help us administer reclamation law more effectively.

Comment: Repeated tinkering with the reclamation law regulations causes destabilization for water districts. It makes no difference to us that you propose to add a new ''supplemental'' section instead of reopening the existing regulations.

Response: The law and regulatory programs are rarely static; adjustments are necessary from time to time to ensure the program is working as it should.

Comment: If you do anything, you should strengthen the regulations. Any weakening of these already limited regulations will perpetuate abuses of reclamation law.

Response: While we have made modifications to the final rule as a result of public comments, we do not believe the final rule is weakened by those changes.

Comment: It appears that the reforms the Congress mandated in 1982 may finally be implemented westwide. However, I remain concerned that, without further refinement, these regulations will remain open to abuse.

Response: We have made several adjustments to the final rule and believe the regulations will allow us to enforce the RRA westwide.

Comment: You admit there are no actual abuses of the existing regulations concerning trusts, but you are worried about ''potential future abuses.'' If there are no violations by the 75 trusts with more than 960 acres, then adopting these regulations would be an abuse of discretion.

Response: The large trusts we have reviewed have been found either (1) To lease out the land held in trust or (2) To have a farm operating arrangement that is not a lease for acreage limitation purposes. This does not in any way mean we have found all farm operators providing services to more than 960 acres and reviewed the associated farm operating arrangements. Because we do not currently collect forms from farm operators, we do not have the information we need to identify all farm operators providing services to relatively large amounts of acreage.

Comment: We believe the Natural Resources Defense Council lawsuit was intended to punish a very small segment of the farming community for perceived abuses of reclamation law, but the proposed regulations sweep into the same bucket the great majority of large and small farmers who follow the law.

Response: We contend that the regulation is narrowly tailored and will not affect the majority of farmers westwide.

Comment: If your real motive is to punish those who have manipulated the regulations so as to qualify for Federal water, then why not merely use the remedies you already have and simply turn off the water to those few? We suspect an ulterior motive, perhaps to make more irrigators ineligible to qualify for Reclamation water.

Response: As discussed above and in the proposed rule preamble, we do have remedies for violations of the law. However, we do not have enough information in all cases to determine if a violation has occurred so that we may apply those remedies. The final rule will help us collect that information.

Comment: The current regulations carry out the intent of the RRA.

Response: The final rule will supplement the current regulations and enable us to more effectively carry out the intent of the RRA.

Comment: We request that you start a stakeholder process, that includes both field hearings and workshops, to explain the intent and application of the rule before you adopt any final rule. Public participation is crucial before you make any final decisions.

Response: We do not believe that field hearings or workshops are necessary, because the scope of the final rule is so narrow. We have collected public comments from the ANPR and the proposed rule and have carefully explained the intent and application of the rule in these rulemaking documents. However, we do anticipate holding workshops after we publish the rule to explain their effects.

ANPR

Comment: Your responses to comments on the ANPR acknowledge that the only issue requiring further review is how those trusts holding more than 960 acres westwide are farming their land. Yet under the logic that large trusts might be replaced with some other arrangement that reclamation law critics would regard as violating the intent of the law, the proposed rule contains such vague, sweeping requirements that it is likely to impact even the smallest landowners.

Response: We believe that the final rule is narrow in scope and will not affect the majority of water users.

Comment: The custom farmer reporting provisions exceed the scope of the ANPR. In public statements, you had limited the discussion to large trusts.

Response: We explained in the ANPR that we were collecting comments in order to formulate a proposed rule to address concerns about compliance with Federal reclamation law by large trusts and other as yet unregulated forms of landholdings in excess of 960 acres. When we analyzed comments submitted by the public, we found that we needed to make changes in order to address problems associated with large farming operations.

Comment: We thought the reason for proposing new regulations was to limit certain large trusts, but it appears the regulations far exceed this objective. We relied on your assurances that changes in the regulations would only deal with trusts. At several meetings and conference calls after you published the ANPR, you confirmed that you did not intend to reopen issues from the regulations that had been recently adopted (43 CFR 426). We believe that this proposed rule does not comply with the ANPR nor with the record produced at your workshop held in Sacramento on March 14, 1997. You have misled the public about the purpose of the proposed rulemaking, since the only relationship between the proposed rule and the ANPR is that you are attempting to deal with farm operators of ''large trusts.''

Response: The purpose of an ANPR is to gather information and public comment in order to form issues to address in a proposed rule. In the ANPR published on December 18, 1996, we asked for input on how we can ensure compliance with the acreage limitation provisions by large trusts *and other forms of landholdings in excess of 960 acres.* Our intent has remained the same as it was at the time we published the ANPR, and that is to ensure that everyone that receives Reclamation irrigation water complies with Federal reclamation law, including the acreage limitation provisions.

Information Collection and Forms (Paperwork Reduction Act of 1995)

Comment: You should develop separate forms for farm operators. A true farm operator has no interest in the land it operates, so that land cannot be considered to be part of the farm operator's landholding. It is therefore inappropriate for a farm operator to submit landholder reporting or certification forms.

Response: We have reviewed this issue and concur. A separate form named the ''Declaration of Farm Operator Information'' (Form 7–

21FARMOP) has been developed. Farm operators who provide services to more than 960 acres held in trusts or by legal entities will complete this form. In addition, we have prepared a tabulation sheet (Tabulation G of ''Declaration of Farm Operator Information'' Forms) that districts will complete as part of their summary form packages.

Comment: You should tailor forms for farm operators and submit drafts for public comment.

Response: Both the Form 7–21FARMOP and Tabulation G were included in the package of RRA forms for the year 2000 submitted to the Office of Management and Budget for review and approval. The public was provided two comment periods on the RRA forms. The first 60-day comment period was provided in the **Federal Register** (64 FR 174, Jan. 4, 1999). The second required comment period of 30 days was also announced in the **Federal Register** (64 FR 28009, May 24, 1999). As part of our continuing effort to provide information on acreage limitation activities to those affected, the draft RRA forms, including the Form 7–21FARMOP and Tabulation G, were sent to all districts that are subject to the acreage limitation provisions on January 8, 1999, along with a copy of the **Federal Register** notice. It should be noted that our current approval of the RRA forms, including the Form 7–21FARMOP and Tabulation G is for both the 2000 and 2001 water years. Thus, no further action will be taken with respect to these forms before they are first required to be completed for the 2001 water year.

Comment: You should remove the information requirement imposed on indirect owners of farm operators.

Response: We have partially incorporated this comment in the final rule. We do not need to know about part owners of entities who are farm operators unless a part owner formerly owned all or a portion of the land in question as excess and sold or transferred it at an approved price. We need information from those part owners in order to fully implement the excess land provision found in § 428.9 of the final rule. Accordingly, we have narrowed the scope of the information requirements for part owners of farm operators.

Comment: We do not believe the proposed collection of information is necessary for the performance of your functions.

Response: We are required to ensure that farm operating arrangements are not leases for acreage limitation purposes. The Congress reinforced its desire for us to take such action when it specifically required the auditing of operations as part of the Omnibus Budget Reconciliation Act of 1987 (43 USC 390ww; Section 224[g]). The most effective way to accomplish this requirement is to obtain information from farm operators. The proposed collection of information is intended to be a more effective and efficient method than those used to date to identify those farm operators who we are most interested in auditing.

Comment: Your estimated burden for the proposed collection of information appears accurate, except that the total number of respondents affected could increase if the potential loopholes are corrected and the RRA is actually fully enforced.

Response: We have reviewed the requirement of who would be required to submit the new Form 7–21FARMOP and decided not to expand it beyond the criteria identified in the proposed rules. Accordingly, we stand by the estimated burden reported in the proposed rules.

Comment: The proposed rule changes would improve enforcement of the acreage limitations, but you must modify the language to close all loopholes to ensure that nobody is exempt due to unintended wording, omissions or oversights. For instance, the rules need to expand collection requirements to include all ''farm operators,'' including ''custom operators.'' We suggest that you require all operators to fill out the forms.

Response: We believe that it would be an inefficient use of resources for landholders, farm operators, districts, and us, if the final rule required ''custom operators'' (custom service providers) to complete the Form 7–21FARMOP. By the way the term ''custom service provider'' is defined, we would not find them to be a lessee under any circumstance. Accordingly, there is no value added in requiring custom service providers to complete RRA forms.

Comment: You should extend the regulations to include reporting on the direct and indirect ownership of excess acreage lands. Shell games regarding indirect ownership devices should be clearly discouraged.

Response: We have required the reporting of direct and indirect ownership of excess land since the 1997 water year. We recommend the commenter examine the ''Designation of Excess Land'' (Form 7–21XS) and associated instructions for further information.

Comment: We agree with the goals stated in the proposed rule, but we believe you should collect information through audits instead of the proposed information gathering system. This would be more effective and less burdensome.

Response: In order to be able to run an effective audit program, we first have to be able to identify the individuals, entities, and organizations that need to be audited. We have found that the RRA forms submitted by landholders have the additional benefit of being an effective means to identify those landholders who should be audited or otherwise reviewed. The RRA form for farm operators simply extends this concept to farm operators. Once the farm operators are identified, their operations will still have to be audited before we can determine if they are leases for acreage limitation purposes.

Comment: What will be the incentive for ''operators'' that are not landowners to file certification forms?

Response: There are various incentives for farm operators to submit the required RRA forms. The first is to ensure the land to which they are providing services does not lose its eligibility to receive Reclamation irrigation water. The second incentive is to not owe the district(s) in question $260 when we issue an administrative fee bill to recover the additional costs we incur as a result of the farm operator not submitting the required form. An additional incentive may be to maintain an effective business relationship with landholders by ensuring compliance with all statutory and regulatory provisions, which will impact the landholders if compliance is not achieved.

Comment: Who would audit and determine accuracy of the reports submitted by farm operators?

Response: It is our responsibility to audit the RRA forms submitted by farm operators. The responsibility of the districts is to collect such forms and to complete the Tabulation G annually based on the information provided on the Form 7–21FARMOP. Nevertheless, it must be remembered that the primary purposes of the forms requirement for certain farm operators is to identify farm operators and provide us with information to determine an audit priority of their associated farm operating arrangements, not to audit the Form 7–21FARMOP.

Comment: How will the government verify the data submitted by farm operators?

Response: We will use the documentation associated with the farm operating arrangement that we review during an audit to verify the data. We will also review information submitted by landholders who have hired the farm

operator in question to verify information provided by the farm operator on the Form 7–21FARMOP.

Comment: Regarding the forms you submitted for comment on January 8, 1999, we believe there will be problems for irrigation districts trying to get people to turn in the forms. A district would send the new form to all farm operators identified on the landowners' forms. However, consider a situation where a farm operator who operates on more than 960 acres in more than one district fails to file forms. While one district may not find this to be a problem, because the farm operator works less than 960 acres in that district, the combined acreage requires that the farm operator file forms. How would either district know that they should not deliver water until the forms are filed? It seems that each district would have to require farm operators to file forms regardless of whether the proposed rules require them to do so.

Response: We have not extended the RRA forms requirements to all farm operators. If a district determines that it would be best to require all farm operators to submit Form 7–21FARMOP, that is the district's prerogative. An alternative would be to send Form 7–21FARMOP to all farm operators identified on landholder forms and let the farm operator decide if he/she/it is required to complete it and return it to the district. Moreover, districts often have knowledge of large farm operators doing business in the region and could send these operators forms. We anticipate holding workshops after we publish the rule to ensure that districts, landowners, and farm operators have notice of the final rule.

Comment: Is a farm operator who is required to report the landholdings on which he provides services eligible to apply class 1 equivalency under 43 CFR 426.11? If so, can equivalency be applied to all land attributed to a particular farm operator, if it is otherwise eligible nonexcess land?

Response: Farm operators are not eligible to use class 1 equivalency factors. Class 1 equivalency factors are not to be used in determining if an individual, legal entity, or organization is required to submit RRA forms. This prohibition is clearly stated in 43 CFR 426.18(g)(3)(i). If, upon review of the farm operating arrangement, a farm operator is determined to be a lessee, then and only then will that lessee be eligible to utilize available class 1 equivalency factors in determining how much land can be selected as nonfull-cost when the lessee completes the ''Selection of Full-Cost Land'' (Form 7–21FC).

Trusts

Comment: We object to the proposed rules and urge Interior to refrain from further rulemakings that target trusts.

Response: The purpose of the final rule is to identify certain farm operators whose farm operating arrangements will then be audited to determine if they are leases for acreage limitation purposes. Determining if a farm operating arrangement is a lease for acreage limitation purposes is not a new compliance activity, nor does it specifically ''target'' trusts. The rule will also ensure the intent of the excess land provisions is being met.

Comment: We object to any change in the law or regulations that deprives us of our ability to do what we believe is in the best interest of the trust's beneficiaries. We object to any change in the regulations which would preclude us from selecting the best possible farm manager for the trust.

Response: The regulation would not prevent you from selecting the best farm manager for your trust as long as the farming arrangement you agree to is not a lease for acreage limitation purposes (this does not represent any change from the current regulatory environment). The regulation would, however, require you to pay the full-cost rate for the water received on the land if you employ a farm operator who once held that land as excess land and sold or transferred it at an approved price.

Comment: Trusts that you already approved should not be subject to any additional regulations.

Response: As with most regulatory programs, in recognition of changing conditions from time to time, we need to adjust regulations to ensure that we continue to properly implement the law. Nevertheless, there are no new additional regulatory requirements being imposed on trusts by this rulemaking, unless the trust holds formerly excess land and the trustee contracts with a farm operator who was the former owner of that land who sold or transferred it at an approved price. In such cases the trustee has three options: (1) Before January 1, 2001, hire a different individual or legal entity to provide services to the land; (2) Pay the full-cost rate for Reclamation irrigation water delivered to such land; or (3) Do not irrigate the land in question with Reclamation irrigation water.

Comment: The 960-acre limitation on trusts is reasonable, but trusts in existence before January 1, 2000 should be exempt from this regulation.

Response: We have not placed a 960-acre limitation on trusts. Rather, the rule requires farm operators to submit RRA forms if they provide services to more than 960 acres held in trusts or by legal entities. We therefore have not accommodated this suggestion in the final rule.

Comment: Our entire farming arrangement, including the initial engagement of the former landholder as farm manager, was approved by the Department of the Interior at the time the trust was created. Any change in that situation appears to be targeted in a punitive way to this trust and its beneficiaries.

Response: The Secretary approves trusts under Section 214 of the RRA and, on occasion, has determined that certain farm operating arrangements are not in fact leases. The Secretary does not approve ''entire farming arrangements,'' nor would doing so preclude the exercise of rulemaking authority under Section 224(c) of the RRA. Moreover, this rule is not targeted at any particular arrangement. This rulemaking addresses the practice of landholders selling excess land at an approved price and then being hired by the new landholder to continue to farm the former land as a farm operator. This practice has been used by existing large trusts in the Central Valley Project. Without the finalization of the proposed rule, this practice may spread to other areas, thereby allowing excess landholders to fashion arrangements that permit them to continue substantially the same enterprise using subsidized water. By eliminating any incentive for the excess landowner to maintain any interest, either property or contractual, in its formerly excess lands, we believe we will have furthered the policies set forth in Section 209 of the RRA and the excess land provisions of Federal reclamation law. Further, Reclamation has decided not to make this provision effective until January 1, 2001, to provide time for trustees and others who may have hired the former excess landowner to determine how best to continue to farm the land.

Comment: We disagree that excess landowners deed land to trusts in order to abuse the congressional intent of reclamation law. As farmers get older, they use the trusts to preserve their heritage for future generations. This allows small family farms to remain intact after the death of the head of the household.

Response: The Congress was clear with regard to excess land. The landowner is to divest all interest in that land if such land is to become eligible to receive Reclamation irrigation water. No exceptions were made for estate planning purposes.

Impacts of the Rule

Comment: The impacts of the rule on farmers and districts would be outrageous with no resulting benefits; we request that you rescind the proposed rule.

Response: The final rule does provide a benefit to landholders and districts because it will help minimize the likelihood that districts and landholders will face cost prohibitive retroactive charges. Under the Acreage Limitation Rules and Regulations, if we determine a farm operating arrangement is a lease, the applicable nonfull-cost entitlement is applied retroactively to the landholding of that lessee (the farm operator). If the farm operator had been providing services to more acreage than the applicable nonfull-cost entitlement under his/her/its farm operating arrangements, the full-cost rate would be applicable. If the farm operating arrangements have been in place for a number of years, the resulting bill to the district could be in the tens of thousands of dollars. It is likely that districts will ultimately hold the landowner and lessee responsible for payment of such a bill.

The final rule provides us with an effective means to identify farm operators who are providing services to land totals that exceed the maximum acreage limitation entitlement (the ownership and nonfull-cost entitlements; 43 CFR 426.2). As a result, we will be able to request that the associated farm operating arrangement be submitted for review early in the process and, hopefully, minimize the likelihood of districts facing full-cost bills long after the lessee (farm operator) provided the services.

Comment: You have grossly understated the impacts of the proposed rules, particularly on small farmers. Many small farmers have their land planted to permanent crops. These farmers, unlike large farming operations, cannot afford all of the equipment necessary to farm the land, and rely heavily on contractors. These contractors provide services to many farmers to spread their investment in the equipment across the requisite number of acres. Although you say the effect of the proposed rules should be limited to approximately 100 farming operations westwide, this is simply not the case.

Response: The regulation itself is limited to those farm operators providing services to trusts and legal entities and to their formerly excess land. The primary way a small farmer will be impacted is if that landholder is a trust or legal entity and its farm operator is required to submit an RRA form because he/she/it is providing services to more than 960 acres held in trusts and by legal entities, but does not. The trust or legal entity can remedy this problem by encouraging its farm operator to submit the required form. Of course, if it turns out that the farm operator is a lessee for acreage limitation purposes, then the nonfull-cost entitlement would be applied, which would happen even without this regulation. The other way a small farmer would be impacted is if the landholder (1) Is a trust or legal entity, (2) Holds formerly excess land, and (3) Hires a farm operator who was the former owner of that land when it was excess and who sold or transferred it at an approved price. We do not believe there are many ''small farmers'' who face this situation.

Comment: The proposed rule would have significant impacts on many growers who receive Reclamation water. Many farms could suffer if you force the vendors to file forms just to justify doing business in our district. This could mean loss of jobs in those companies and loss of profits.

Response: We fail to see how requiring a farm operator to file an RRA form could result in a loss of jobs or profits to companies who provide farm operating services.

Comment: The regulation could negatively affect individuals who are not part of any ''large trust'' and who are in full compliance with reclamation law.

Response: The regulation could negatively affect individuals who are not part of any ''large trust'' only if such individuals are not currently in full compliance with Federal reclamation law, e.g., if their farm operating arrangement is really a lease for acreage limitation purposes. A primary purpose of this regulation is to collect information to ensure certain farm operating arrangements are in full compliance.

Comment: By its vague and overgeneralized approach, the proposed rule is sweeping in its information requirements and puts districts at risk of violating the prohibition on water deliveries to non-reporting service providers they do not even know exist.

Response: In order to help implement this new RRA forms requirement and provide district staff time to familiarize themselves with farm operators providing services in their districts, we have provided for a later effective date than we included in the proposed rule; specifically the effective date will be January 1, 2001, rather than 2000.

Comment: RRA forms and regulations require an exceptional time commitment, both to comment on new regulations/forms and to monitor acreage limitation and eligibility status. RRA regulations are becoming more complicated and more difficult to administer.

Response: Unfortunately, the enforcement and administration of the RRA is somewhat complicated because of the nature of the provisions included in the Act. Reclamation has tried to simplify the forms requirements where possible.

Comment: The regulation places an unreasonable burden on irrigation districts. Each district will have to send out forms, collect and store them, be subject to audits, all of which will increase costs. There will be increased time and expense for district personnel to receive, review, reissue forms, and track the receipt of the new forms for a farm operator. You should make a finding and determination of the impact that the regulations would have on irrigation districts who are responsible for implementing the regulations.

Response: We believe such impacts would be minimal westwide. We have no evidence that currently there is widespread use of farm operators providing services to more than 960 acres held in trusts or by legal entities. We prepared an Environmental Assessment (EA) on this rulemaking, and we refer the commenter to that EA for further information concerning impacts.

Comment: The information requirements are burdensome because no time limit is placed on determining prior ownership of formerly excess land and it requires information to be submitted by parcel.

Response: All RRA forms require information to be submitted by land parcel. As a result, we anticipate that the information requirement for certain farm operators will be no more burdensome than the information requirements imposed on landholders.

Comment: It is inappropriate to require information from parties not directly benefitting, when the consequences fall on the actual beneficiaries, not those parties.

Response: We do not believe it is inappropriate to require certain farm operators to submit RRA forms. Farm operators directly benefit from providing services to land by receiving payment for those services.

Comment: We are concerned about this regulation causing an adverse impact of the future eligibility of irrigation land. For example, we are concerned that when a deed covenant

on acquired excess land expires, the proposed rules could keep the buyer's land ineligible for project water indefinitely, if the farm operator was the former owner of the land when it was excess.

Response: This rulemaking will not prohibit the delivery of irrigation water to formerly excess lands being operated by the former owner. Rather, the full-cost rate will be charged for water delivered to formerly excess lands operated by the former owner of such lands. This rule creates a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess land in parcels of 960 acres or less to independent parties.

Comment: Your field offices have been downsized. How will you find money in the budget for compliance specialists to enforce these regulations? If operators fail to file forms, how will anyone ever know?

Response: We already are required to audit farm operators. The requirement for farm operators to submit RRA forms should simplify the process used to determine what farm operators are providing services to more than 960 acres. We expect to find instances of farm operators not filing RRA forms through our normal water district review process and audits of large landholders.

Authority

Comment: You do not have statutory authority to issue § 428.9 of the proposed rule. The proposed rule contains no reference to its statutory authority, and in the preamble, there is only one attempt to explain that RRA Section 209 authorizes the proposed rule. We assert that Section 209 does not authorize the proposed rule, because nothing in that Section authorizes Interior to impose eligibility or pricing restrictions on owners or farm managers once lands have been disposed of in compliance with Federal reclamation law to nonexcess owners.

Response: We believe that we have such authority based on the excess land provisions of Federal reclamation law, specifically Section 209 of the RRA, and our general rulemaking authority to carry out the provisions of the RRA, as set forth in Section 224.

Under the Supreme Court's decision in *Chevron USA, Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), an agency may issue regulations to the extent that its statutory interpretations reasonably relate to the purposes of the enabling act and are within the agency's grant of authority. Section 209 of the RRA requires landholders to dispose of their interest in excess lands in order for such land to be eligible to receive Reclamation irrigation water. By eliminating the capacity of an excess landowner to retain or obtain an interest in its formerly excess lands, the Congress created a strong incentive for excess landowners to dispose of their excess lands and sever their relationship with such lands.

In practice, we have found that the capacity of an excess landowner either to retain or obtain a contractual interest in formerly held excess lands creates an incentive in the excess landowner, contrary to that created by the Congress in Section 209, to dispose of the excess lands to a trust or other legal entity that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest. Rather than disposing of the excess lands through independent sales in tracts of 960 acres or less, a former excess owner could dispose of its excess lands to a large trust or other legal entity that the former owner itself created or with which the former owner has a continuing relationship or interest, which would allow the former owner, by contract, to continue to farm its formerly excess lands as a single unit. We would view such practices as an abuse of the excess lands laws because through these dispositions, a situation is created where substantially the same enterprise—using the same employees, same equipment, and same water at the nonfull-cost rate on the same undivided tract of land—continues to farm the same large acreage.

We believe allowing such practices is contrary to policies enunciated by the Congress in enacting Section 209 of the RRA. Under Federal reclamation law, the Congress sought to provide irrigation water to small family-owned farms in its effort to develop the West and increase agricultural production, but in a manner that did not fuel land speculation or contribute in any way to the monopolization of lands in the hands of a few private individuals. *Peterson* v. *U.S. Dept. of the Interior*, 899 F. 2d 799, 802–03 (9th Cir.), *cert. denied*, 498 U.S. 1003 (1990). The policy was and still is to make the benefits from the program ''available to the largest number of people, consistent with the public good.'' *Ivanhoe Irrigation Dist.* v. *McCracken*, 357 U.S. 275, 292 (1958). In 1982, the Congress amended Federal reclamation law with the RRA to curb known abuses like leasing and to limit the water subsidy being provided. The Congress did not see any public purpose or rationale for providing taxpayer subsidies to large-scale farming interests that could well afford to pay for the public benefits they receive. Full-cost pricing for farms in excess of the acreage limitations was a compromise between the economics of current farming enterprises and the policy of broad distribution of water benefits to small farmers.

We have already developed and enacted regulations found in 43 CFR 426 to carry out the Congress's intent in the excess lands provisions. However, the development of current practices that impede the fulfillment of congressional intent requiring the total divestiture of a former owner's interest in its excess lands in independent transactions of 960 acres or less requires the supplementation of the rules dealing with the disposition of excess lands. To reduce the incentive to create and engage in practices contrary to congressional intent in enacting Section 209, we are exercising our rulemaking authority under Section 224(c) of the RRA. By requiring full-cost pricing of water delivered to lands operated by a former owner of excess lands, the final rule creates a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess lands in parcels of 960 acres or less to independent parties, as intended by the Congress.

Comment: Section 428.9 is clearly beyond the scope of your authority under the RRA, and you should delete it in its entirety. A true operating arrangement is not an interest in the land or a lease. Your assertion that the contractual relationship between the former excess landowner as farm operator and the current landholder represents a continuing financial interest in the land is not true. The RRA does not attempt to limit the former excess owner's relationship with the new landholder, and you have no authority to do so.

Response: As discussed in the above response, our reading of Section 209 and congressional intent in enacting the excess land provisions provides the authority for this rulemaking. Moreover, we are not limiting the relationship between the new landholder and the former owner. We are monitoring the relationship between the former owner and its formerly excess land to ensure that the excess land is eligible to receive Reclamation irrigation water in accordance with the RRA. If excess land

is truly being sold or transferred in a manner that results in the intent of the excess land provisions being fulfilled, then this rulemaking should have no impact on those new landowners.

Comment: There is no authority that provides that the farm manager, under a farm management agreement, owns an ''interest'' in the farmed land. In fact, authorities conflict with this proposition. (In the case of *Von Goerlitz* v. *Turner*, 65 Cal. App. 2d 425, 429 (1944) it was held that an operating agreement does not create an ''interest'' in real property.) Interior itself has never interpreted the entry into a farm management agreement as creating an ''interest'' in property. Interior has always recognized that the reclamation laws relate only to ''ownership'' and ''leasing'' of lands, not to farm size, and not to operation under a management agreement.

Response: By requiring full-cost pricing of water delivered to lands operated by a former owner of excess lands, the final rule creates a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess lands in parcels of 960 acres or less to independent parties, as intended by the Congress. This causes no harm to the former owner of that land. If the former owner wants to continue to be involved in the land in question either as a lessee or a farm operator providing services, the former owner may do so, and the land will be eligible to receive Reclamation irrigation water. However, where the former owner contracts to farm formerly excess land, such deliveries will be at the full-cost rate.

Comment: With regard to farm operators who provide services to land sold or transferred out of excess status, there does not appear to be any legal basis to preclude delivery of water to such land, because it has been brought into compliance with the acreage limitation provisions by the sale.

Response: See our response to the first comment in this section. The final rule does not preclude water delivery to formerly excess lands. It is up to the new landowner how the land is to be farmed, factoring in the costs for Reclamation irrigation water, and this final rule provides options regarding the use of Reclamation irrigation water.

Comment: The RRA does not give you a basis to impose the full-cost rate on a qualified recipient, except as determined by the recipient's landholding, which according to Section 202 of the RRA, must be owned or operated under a lease.

Response: See response to first comment in this subsection. Section 209 clearly expresses the Congress's intent that a former owner of excess land must totally divest its interest in his/her/its formerly excess lands. Using full-cost pricing to discourage the former owner of excess lands from providing services to formerly excess land as a farm operator serves as a strong disincentive to the disposition of excess lands to trusts or other legal entities that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest, and creates an incentive to dispose of excess lands in parcels of 960 acres or less to independent parties, as intended by the Congress. In fulfilling congressional intent regarding disposition of excess lands, we determined that we could allow the delivery of irrigation water to such lands if the full-cost rate was paid because full-cost pricing serves as a sufficient disincentive against the former owner transferring the land to an entity that the former owner of excess lands itself created or with which the former owner has a continuing relationship or interest without foreclosing all farming options available to the current owner.

Comment: You lack authority for this rulemaking because the Secretary of the Interior has approved the large trust arrangements, and the Congress exempted trusts from the acreage limitation provisions.

Response: See response to first comment in this subsection. The RRA does not exempt trusts from application of the acreage limitation provisions. It exempts trustees acting in a fiduciary capacity from application of the acreage limitation provisions if the trusts meet certain criteria. In approving trusts, the Secretary determined whether these criteria have been met. Moreover, the rulemaking does not impose additional requirements on trusts per se. It addresses practices of excess landowners that have developed since the enactment of the RRA to avoid Section 209 and the Congress's intent that former owners of excess lands totally divest themselves of interests in excess lands by disposing of excess lands in parcels of 960 acres or less to independent parties.

Comment: You do not have the authority to adopt regulations that would apply ownership or full pricing limitations to lands held in trust. The Congress explicitly addressed the applicability of these limitations in Section 214 of the RRA, which is clear and unambiguous. You must give effect to this explicit congressional intent, and not try to finalize these regulations.

Response: The provisions of Section 214 apply solely to a trustee acting in a fiduciary capacity and only if the trust in question meets certain criteria. The RRA does not provide that land held in trust is totally exempt from the application of the acreage limitation provisions. All land held in trust is attributed to either the beneficiaries, grantors, or trustees, depending on the type of trust and if the criteria found in 43 CFR 426.7 have been met. The acreage limitation entitlements and other landholdings of the parties to whom the land held in trust is attributed will determine if that land is eligible to receive Reclamation irrigation water and at what price.

Comment: Interior faces substantial legal barriers when it seeks to change RRA regulations, including breach of contract, regulatory takings, and administrative res judicata (see *United States* v. *Utah Construction & Mining Co.,* 384 U.S. at 394, 421–422.)

Response: These regulations supplement the 1996 RRA regulations to address some current practices engaged in by former owners of excess lands that are contrary to the policies set forth by the Congress in the RRA. We do not believe that any claims based on breach of contract, regulatory takings, administrative res judicata, or statutory violations have merit. While it is unclear what contract is alleged to be breached or what vested property right will be taken, these regulations should not affect any contracts between Reclamation and the districts. Moreover, landowners have no vested right to the delivery of nonfull-cost water to excess lands regardless of who owns, leases, or operates the lands. We believe that this rulemaking is rationally related to the provisions of the RRA and the Congress's concerns to promote small farming operations and equitable distribution of water under modern farming conditions.

Comment: The proposed rule would impose significant information requirements on non-water using parties identified in the rule as ''farm operators.'' Neither the RRA nor other Federal reclamation law contemplates placing information requirements on parties other than landowners and water users. It is unclear whether you have the legal authority to compel parties other than project beneficiaries to submit information to you.

Response: Section 224(c) of the RRA requires us to collect all data needed to carry out and ensure compliance with the acreage limitation provisions of

Federal reclamation law. We have determined that we need additional information concerning farm operators to ensure that we are aware of those providing services to more than 960 acres held in trusts or by legal entities. Only by reviewing farm operating arrangements can we be sure that they are not really leases for acreage limitation purposes.

Need for the rule

Comment: We believe that until there is actual evidence that the vast majority of water users are not in strict compliance with the current RRA regulations, you should not impose additional burdens upon the water users.

Response: Most parties have long agreed that Reclamation should be auditing farm operating arrangements to ensure they are not leases for acreage limitation purposes. If we do not take such action, we believe that in a relatively short time the vast majority of water users would not be in strict compliance. A primary purpose of this regulation is to more effectively identify farm operating arrangements that should be reviewed to determine if they are leases.

Comment: Expanding the reporting and certification net to capture more than what is required for the economic interest standard is a waste of time, will add an additional burden to districts westwide, and will do nothing to help compliance with the RRA.

Response: We are expanding the RRA forms requirements so that we can more efficiently and effectively identify those farm operators that need to be audited to determine if their farm operating arrangements are leases for acreage limitation purposes. We will audit all farm operators who will be required to submit the new Form 7–21FARMOP. At that point, we will apply the economic interest-test.

Comment: You could more fully utilize the sources of information already available, such as the Farm Service Agency and existing RRA forms.

Response: We have been utilizing both of these sources of information concerning farm operators. Records maintained by the Farm Service Agency (FSA) are useful. However, because of the differences between the acreage limitation program and the FSA programs, the FSA records do not always provide the information we need to identify farm operators. As for the RRA forms, we have been collecting information on farm operators since 1988. However, as we explained in the Preamble to the proposed rule, this effort requires the district staff to provide information to us on every farm operator reported by landholders on RRA forms submitted to the district. We must then collate that information to determine if any farm operators are providing services to more than 960 acres and, thus, be the subject of an audit. Any differences in the information included on the RRA forms by landholders concerning names, addresses, telephone numbers, etc. materially affect the effectiveness of this process. This entire system can be significantly simplified for both the districts and us by requiring only those farm operators who provide services to more than 960 acres to submit RRA forms.

Comment: New farm operator forms are not necessary. Landowners could just note the taxpayer identification number of the entity providing farm operating services on their annual certification forms. Then, if Interior determines an operator is operating more than 960 acres, it could collect applicable data as per RRA Section 224(c). The burden should lie with Interior, not with farmers and farm operators.

Response: Requiring landholders to include the taxpayer identification number for farm operators on landholders forms would reduce problems associated with using names, addresses and telephone numbers as identifiers; however, it is only a partial solution. This is because taxpayer identification numbers apply only to legal entities. Individuals who are providing services as farm operators have social security numbers and while we can ask, we cannot require an individual to provide his or her social security numbers on RRA forms. We also do not believe a landholder would normally have the taxpayer identification number for farm operators with whom the landholder has contracted for services. Thus, this would add to the burden landholders face in completing their RRA forms. Finally, a requirement to include the taxpayer identification number for farm operators on landholder forms does not address the problems we have encountered with districts annually having to provide us with information on all operators providing services to land in their districts or the need to then collate that data in order to determine which farm operators are providing services to more than 960 acres.

Comment: Farm operator information is already provided on individual, entity, and trust forms. To require an additional farm operator form is redundant and burdensome. We suggest that you could change Forms 7–21Summ–C and 7–21Summ–R to include information on whether a landholder utilizes an operator, and if so, whether the operator works on more or less than 960 acres. You could then review the forms and compile a list of farm operators—this would allow you to gauge the scope and size of the problem without causing hardship on custom operators, landowners, and districts.

Response: This suggestion would require districts to include additional information on the tabulation sheets they are required to annually submit with their summary forms. We will require districts, as a result of this final rule, to complete a new tabulation sheet providing limited information from the new Form 7–21FARMOP submitted by farm operators. The difference is that the commenter's suggestion would significantly increase the burden on districts as compared to what this final rule will require, because rather than providing information on the tabulations sheets for less than an anticipated 200 farm operators submitting forms, district staff would be required to submit information on every farm operator reported on landholder forms. In addition, this suggestion would not relieve the need for us to collate that information to determine which farm operating arrangements need to be audited. The only way this suggestion would address that problem is for us to require much more detailed information on landholder forms concerning any farm operating arrangements. That information would then have to be included by districts on tabulation sheets. Such an arrangement would increase the RRA forms burden on both landholders and districts.

Comment: You already have the tools available to determine whether a farming arrangement is a lease since all leases must be in writing. You should focus on your current enforcement powers instead of imposing new useless requirements.

Response: It is true that all leases must be in writing. However, if we only reviewed those farming arrangements that the landowner and other party readily admit are leases, then we would not be in compliance with the statutory requirement to review compliance by all individuals and legal entities. This includes reviewing operating arrangements to determine if they are really leases for acreage limitation purposes.

Comment: There are sufficient legal remedies under reclamation law to correct perceived abuses and to stop water deliveries to ''entities'' that are not in compliance with acreage limitation.

Response: We agree we have legal remedies to correct abuses. The regulation is intended to gather information more effectively to determine if there has been an ''abuse'' and further define noncompliance with respect to the excess land provisions.

Comment: Because you may not apply ownership and full-cost limitations to lands held in trust, the information collection from farm operators that perform operations on trust lands in excess of 960 acres is unnecessary.

Response: The acreage limitation requirements are in fact applied to land held in trust. They are applied in two ways. First, all land held in trust must be attributed to individuals or entities, be it the beneficiaries, trustees, or grantors. The acreage limitation entitlements and westwide landholdings of those individuals and entities to whom the land is attributed determine if the land held in trust is eligible to receive Reclamation irrigation water and how much must be paid for such water. The second application occurs if the trustee should lease out the land held in trust. The nonfull-cost provisions apply to that lessee. The new information collection is to ascertain if the trustee has employed a farm operator so that we can review the farm operating arrangement to determine if it is really a lease for acreage limitation purposes.

NEPA Review

Comment: The environmental impact statement (EIS) prepared for the last rulemaking generated substantial public involvement and resulted in ''preferred alternative'' regulations that did not include farm operator reporting requirements. Those regulations were finalized subject only to the trust issues discussed in the ANPR. We do not think that anything has changed since the preparation of the EIS to warrant this or any other change in the RRA regulations.

Response: This rulemaking is a result of the trust issues discussed in the ANPR.

Comment: The law is clear that any new rulemaking that considers limiting water subsidies in the 17 Western States but then results in a final set of regulations that fails to limit subsidies is fatally defective if the regulations are not fully analyzed under NEPA. The effect on the environment of failing to enforce the RRA's pricing limits is simply too great to allow for categorical exclusion.

Response: We believe that the categorical exclusion is justified for this rulemaking. However, in order to be responsive to public comments, we have prepared an Environmental Assessment to more carefully analyze the regulation under NEPA.

Comment: You should consider the alternative of returning any water savings from the Central Valley Project to the Trinity River for implementation of the Trinity River Flow Decision.

Response: This suggestion falls outside of the scope of this rulemaking. In addition, we do not anticipate any water savings, since it is more than likely that landholders will adjust their farming practices to minimize any impact of this final rule.

Part 428—Summary of Changes; Public Comments and Responses

This section of the preamble describes changes from the proposed rule to the final rule and provides responses to public comments received on the proposed rule by section.

Section 428.1 Purpose of this Part

This section concisely identifies the issues that 43 CFR part 428 addresses. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

Section 428.2—Applicability of this Part

This section summarizes to whom the final rule applies and provides that this rule supplements the regulations found in 43 CFR part 426. We made no changes to this section in the final rule as compared to the proposed rule.

Comments Concerning § 428.2—Applicability of this Part

Comment: The language in § 428.2(a) will add another layer of categorization of landholders, which will only add to the confusion for landholders and districts. This categorization will add to the administrative burden on districts and Reclamation.

Response: We agree that at least initially another RRA forms submittal threshold and the limitation of the application to farm operators providing services to trusts and legal entities could cause confusion. However, we believe this is preferable to the burden associated with requiring all farm operators to submit Form 7–21FARMOP if they are providing services to more than 40, 80, or even 240 acres.

Comment: The proposed regulations concerning ''farm operator'' are not necessary because the original act makes no mention of this group and more importantly the farm operator has nothing to do with the ownership of the land which is the basis for eligibility.

Response: While ownership is the basis for determining the eligibility of land to receive Reclamation irrigation water, the price to be paid for such water is based on the amount of eligible acreage, leased or owned, to be irrigated. As a result, farm operating arrangements must be reviewed to determine if they are leases for acreage limitation purposes and thus subject to application of the nonfull-cost entitlement provisions of the RRA.

Comment: The text of § 428.2 includes a possible oversight: subsection (b) extends the regulations to certain operators of formerly excess land (those who previously owned the land). But it does not address the fact that the operator can mask his true identity, perhaps by setting up a second legal entity to farm the land, or adding one limited partner so that the two identities are not identical. The use of ''indirect'' ownership devices and creation of new legal entities should not be allowed to frustrate the purpose of the regulations. While § 428.4(b) helps somewhat by bringing indirect owners of farm operators into the definition, that may not be enough if the operating entity that is indirectly owned is still not the same as the original ownership entity. Also, § 428.9(b)(2) helps by making clear that part owners of legal entities are still subject to the new regulations, but this still assumes the operating and owning entity are technically the same. You must change the regulations to address what happens when the original owner simply changes the legal entity that it uses to operate the formerly excess land, even though the benefits still flow to the same person or persons.

Response: We have not made any changes to the regulation as a result of this comment. While we recognize that those who really want to evade the new RRA forms requirement may find a way to do so, we must balance our efforts to close such possible loopholes with the additional burdens such actions will have on the public.

Comment: Section 428.2 states that the proposed rule applies to farm operators who provide services to more than 960 acres. If a district has not conformed to the discretionary provisions of the RRA does the 960-acre threshold still apply?

Response: Yes, the 960-acre forms submittal threshold applies to all farm operators regardless of the acreage limitation status of the district where the land in question is located.

Comment: Section 428.2(b) requires annual forms for ''anyone who is the indirect owner of a legal entity that is a farm operator * * *'' What about publicly traded corporations that fit the definition of ''farm operator''? Does this mean that shareholders of corporate

farm operators must file individual forms every year? What about other part owners where there is no change in the operation?

Response: Section 428.2(b) does not establish forms requirements for farm operators. However, in § 428.4(b) which does establish those requirements, we have made it clear that part owners of legal entities that are farm operators which are required to submit RRA forms only have to submit a Form 7–21FARMOP if a portion or all of the land to which the legal entity is providing services was formerly owned by the part owner as excess and sold or transferred at an approved price. Accordingly, if a corporation is a farm operator that is required to submit an RRA form, only those shareholders that formerly owned land as excess and sold or transferred it at an approved price that is now being farmed by that corporation would have to submit Form 7–21FARMOP annually.

Comment: We understand the proposed rule to mean that if the same contractor does work on my ranch and someone else's that the two farms would be considered as one, so that if the total acreage reaches 960, the remainder of the property would be ineligible.

Response: That is not a correct interpretation. The simple fact that a farm operator is providing services to more than 960 acres held in trusts or by legal entities does not result in the ineligibility of land. The regulation only requires such farm operators to submit RRA forms. The land only becomes ineligible for delivery of Reclamation irrigation water if a farm operator does not submit the required RRA form; then all of the land to which that farm operator is providing services would be ineligible until the form is submitted. If as a result of an audit of a farm operating arrangement, it is determined the farm operator is a lessee, then the nonfull-cost entitlement would apply. This does not affect the eligibility of the land; rather, it will impact the price paid for Reclamation irrigation water delivered to a portion of the land that is leased.

Comment: We request clarification as to how land held by a 100 percent family-owned entity would be affected—would land be counted against the farm operator as land held by a legal entity?

Response: Yes, there is no exception for family-owned entities.

428.3—Definitions Used in this Part

This section establishes acreage limitation program definitions for terms that are not defined in 43 CFR part 426. We made two changes to this final rule as compared to the proposed rule as a result of comments received. First, we changed the term ''custom operator'' to ''custom service provider.'' We believe that change will eliminate any confusion that may have occurred when we used the terms ''custom operator'' and ''farm operator.'' The second change we made was to make it clear that when we define ''custom service provider,'' we are referring to an individual or legal entity that is providing one specialized service to the landowner, lessee, sublessee, or farm operator. We used in the proposed rule the phrase ''a specialized, farm related service * * *'' which seemed to cause some confusion.

Comments Concerning § 428.3—Definitions Used in this Part

Comment: The definition of farm operator is unnecessary, unsupported in reclamation law, and far too broad.

Response: We disagree with the commenter. The Congress decided in 1987 that we were to audit operators, and it was clear those operators were a distinct group from landholders. We have had definitions of ''operator,'' ''custom farming service,'' ''principal operator,'' etc., that we use in reviewing farm operating arrangements for quite some time. We believe that such definitions are necessary for effective enforcement of the RRA.

Comment: The regulation creates a great deal of uncertainty regarding the definition of an operator. This is unnecessary because the Congress has dealt with this definition in reclamation law.

Response: On the contrary, this definition will provide districts, landholders, and others a clearer understanding of the term ''farm operator.'' We are not aware of any definition of the term ''operator'' created by the Congress in conjunction with the acreage limitation provisions.

Comment: Definition of ''farm operator'' could be interpreted to include any number of employees or contractors who assist in a farming operation but are not invested in the farming enterprises.

Response: The definition of ''farm operator'' specifically excludes employees for whom the employer pays social security taxes. It also specifically excludes custom service providers if that individual or legal entity provides one specialized, farm-related service. If a contractor is providing multiple services and those services are being provided to more than 960 acres held in trusts or by legal entities, then we want to know about that contractor for further review.

Comment: The definition of ''farm operator'' is not sufficient. Many operators provide multiple services to one landholder, often this is done by verbal agreement. This could fall under either ''farm operator'' or ''custom operator.''

Response: We disagree. However, we have revised the definition of ''custom service provider'' to make it clear that it only includes those individuals or entities providing one specialized, farm-related service. All individuals or entities providing multiple services to one landholder would be classified as ''farm operators,'' with the exceptions included in that definition (e.g., spouses and minor children).

Comment: The definition of ''farm operator'' is inconsistent with the term ''custom operator.'' What is the meaning of ''performs any portion of the farming operation''? Custom operators perform part of the farming operation and may make a decision, based on equipment availability and crop maturity when the crop is fertilized, sprayed, or harvested.

Response: What we mean is that any individual or legal entity that is providing more than one specialized, farm-related service is a ''farm operator'' for acreage limitation purposes. In order to make sure that landholders and others do not consider ''management'' of the farm to be one service, we have made it clear in the definitions that all farm managers are considered to be ''farm operators.''

Comment: The definition of ''farm operator'' is far too broad; we understand it to mean that anyone else except ''custom operators'' is a ''farm operator.'' This could affect farm managers who are employees of the farmer and carry out the directions of the farmer. These managers do not share in the risk of the operation, and should not be included in the definition.

Response: As we have stated, if the ''farm manager'' is an employee of the farmer for whom the landholder (employer) is paying social security taxes, then we do not consider that individual to be a farm operator. However, a farm manager who is an ''employee'' of the landholder, but the landholder is not paying social security taxes will be considered to be a farm operator for acreage limitation purposes. Other than completing an RRA form if required, generally this should cause no problems since a true employee of a landholder is not likely to have an arrangement that we will consider to be a lease for acreage limitation purposes. If the land in question is formerly excess land and the ''employee'' is the former landowner, all the current landholder will need to do to avoid application of

the new excess land provision is to make the individual a true employee by paying the social security taxes.

Comment: You should redefine ''farm operator'' as follows: ''*Farm Operator* means an individual or legal entity other than a landholder that performs a substantial portion of the farming operation on behalf of the landholder. Farm operator does not include (i) custom service providers, (ii) ancillary service providers, or (iii) employees for whom the landholder pays social security taxes.''

Response: We have not incorporated this suggested change in the final rule. We have learned that including a phrase such as ''substantial services'' in a definition makes administration and enforcement difficult.

Comment: The definitions of ''farm operator'' and ''custom operator'' are confusing and should be more clearly distinguished. We believe you are attempting to distinguish between those who provide discrete services to a farm under the direction of the landholder or other operator, and those individuals and legal entities that truly ''operate'' the farm on behalf of the landholder. Using the term ''operator'' in both definitions blurs the distinction. We suggest you use ''custom service provider'' for the category of those who do not have to file forms. We suggest you define the term to mean an individual or legal entity that provides a discrete service or a limited range of discrete services, and provide as many examples as possible, including:

- pest control advisors,
- irrigation consultants,
- fertilizer applicators, and
- labor contractors.

Response: We have made the suggested change to ''custom operator''; it is ''custom service provider'' in the final rule. However, we have decided not to add more examples to the ''list'' of services that would be considered to be ''custom services,'' because it would be impossible to make an all-inclusive list as part of the regulation and we do not want to give the impression that we have created an all-inclusive list. The definitions are clear that any specialized, farm related service will be considered, as long as that service is not ''management.''

Comment: You should exclude certain contracting arrangements from the application of the proposed rule. Commission merchants may offer financing and consulting services to a landholder, but do not share in the risk of loss of the farming operation. Also, specialty crops are produced on a forward or output contract basis. A commodity buyer similarly offers financing and consulting services to the landholder, but does not share in the profits or risk of loss of the farming operation. We suggest that you include these ''ancillary service providers'' within the custom service definition, or create an exclusion from the definition of farm operator.

Response: We have not included the suggested change in the final rule. It has been our experience that upon review, some forward contracting arrangements actually include transfers of economic risk from the landholder to the forward contractor. We have also seen ''forward contracts'' where the landholder's responsibilities have been reduced to basically being a gate-keeper, while the forward contractor performs all of the work or arranges for all of the work to be done. Consequently, we have determined that we need to audit forward contracting and similar arrangements to ensure they are not leases for acreage limitation purposes.

Comment: The definitions of ''farm operator'' and ''custom operator'' are not understandable, and the distinction between the two is not clear—by ''farm operator'' do you mean farm managers only? Is a tomato cannery that provides both contract planting and harvesting a ''custom operator'' or a ''farm operator''?

Response: A custom service provider is an individual or legal entity that is providing one specialized, farm-related service to a landholder or farm operator. Everyone else is a farm operator, including all farm managers. The only exceptions are for spouses, minor children, and employees for whom social security taxes are being paid by the employer. Since the subject tomato cannery is providing a planting service and a harvesting service to the same land, it is a farm operator of that land.

Comment: You should delete the term ''farm manager.''

Response: We have not incorporated this suggestion. It is important for everyone to understand that we consider all farm managers to be ''farm operators.'' Otherwise, it could be interpreted that the farm manager is an exempt custom service provider because the farm manager only provides one service; namely, management of the farm.

Comment: In many cases it is virtually impossible to determine whether a contractor hired by a farmer is a farm operator or a custom operator, because many ''custom operators'' may provide more than one service. Is the distinction between the two based on the number of services a contractor provides?

Response: Yes. We have made that clear in the final rule by revising the definition of custom service provider to state that it is an individual or legal entity that provides one specialized, farm-related service to the land in question.

Comment: Section 428.3 defines farm operator, but does not address the reclamation law status of the farm operator. This raises several questions about how the regulations would apply:

- If a farm operator only performs services in a district that has not conformed to the RRA discretionary provisions, is the farm operator subject to prior law provisions?
- Can a farm operator make an irrevocable election to conform to the discretionary provisions?
- Would a farm operator that benefits more than 25 natural persons be considered a limited recipient (defined in 43 CFR 426.2)?
- If a farm operator is attributed to a foreign entity or nonresident aliens, do all the provisions of the proposed rules still apply?

Response: A farm operator is not subject to either the discretionary provisions or the prior law provisions, since we are not applying the acreage limitation provisions to farm operators. However, if after reviewing the associated farm operating arrangement, it is determined that a farm operator is a lessee, then the farm operator will be required to submit the appropriate certification or reporting forms. Whether or not that lessee is subject to the discretionary or prior law provisions will then depend on the acreage limitation status of the district where the lessee holds the land in question and if the lessee has made an irrevocable election. If the lessee is subject to the discretionary provisions and is a legal entity, whether or not the entity is a qualified recipient or a limited recipient will depend on how many natural persons the legal entity benefits.

If a farm operator is a foreign entity or nonresident alien and provides services to more than 960 acres held in trusts or by legal entities, the foreign entity or nonresident alien will be required to submit a Form 7–21FARMOP. If it is determined that the associated farm operating arrangement is a lease, then whether or not the foreign entity lessee or nonresident alien lessee is eligible to receive Reclamation irrigation water will depend on if they meet the criteria provided in 43 CFR 426.8.

Comment: If a farm operator is employed for an ''agreed-upon payment,'' does this make the farm operator a custom operator and therefore exempt?

Response: We cannot provide a general answer to this question. We have reviewed more than one farm operating arrangement where the farm operator is employed for an ''agreed-upon payment'' and then find a bonus clause included elsewhere in the documentation. If the farm operator is being compensated solely on a dollar-per-hour or dollar-per-acre basis, then they have not assumed any economic risk and the arrangement will not be determined to be a lease for acreage limitation purposes. However, that does not make the farm operator exempt from the RRA forms requirement if he/she/it is providing services to more than 960 acres held in trusts or by legal entities. Only by identifying such farm operators and reviewing the associated farm operating arrangements can we determine if the farm operating arrangement is or is not a lease for acreage limitation purposes.

Comment: The proposed rule does not take into consideration the actual farming practices in the west. Is a processor of any kind of an agricultural commodity that finances a grower considered to be a ''custom farmer'' or a ''farm operator'' because they provide one or more services to the farm? What if this processor has several thousand acres of this crop? We do not think that the Congress intended to do this in 1982.

Response: If a processor is only providing financing, then the processor will not be considered to be a farm operator. However, if the processor, for example, is providing financing, harvesting services, and marketing the crop we will consider that processor to be a farm operator. If that processor is providing multiple services to more than 960 acres held in trusts or by legal entities, the processor will need to submit a Form 7–21FARMOP. Regardless of whether a processor has to submit an RRA form or not, if it turns out, upon review of the farm operating arrangements, that the processor is a lessee for acreage limitation purposes, the nonfull-cost entitlement will apply to that processor. That was the intent of the Congress when they required us in 1987 to audit landholdings and operations.

Comment: Section 428.2 states that the new regulations apply only to ''farm operators,'' and the definition of this term excludes ''custom operators.'' But the second term is defined so broadly that many true farm operators might believe that they qualify as a ''custom operator'' and fail to comply with any part of the new regulations. To fix this gigantic loophole which could render the whole rulemaking pointless, the definition of ''custom operator'' must be tightly reworded so that operators know exactly who is covered.

Response: We have revised the definition of ''custom service provider,'' which is now defined very narrowly. That is, it includes only individuals or legal entities that provide one specialized, farm-related service.

Comment: In order to ensure that you receive information on the full range of operators who may meet the standards for ''use or possession of land'' or ''economic risk,'' the definition of ''farm operator'' must include ''custom operators,'' or else you should place some reporting requirements on ''custom operators.'' Without requiring some response from these entities, you would be relying on self-definition and self-reporting to determine which operators have to submit forms. An entity could determine that it is a custom operator, and be completely exempt from the new reporting requirements.

Response: We have not incorporated this suggested change. To do so would be imposing an RRA forms requirement on individuals and legal entities that we would never determine to be lessees for acreage limitation purposes. Accordingly, we do not need to collect information from such parties and to do so would not be in the spirit of the Paperwork Reduction Act of 1995.

Comment: Based on the definition of ''farm operator,'' independent contractors who perform specialized services for farms and have no vested interest in the outcome of the crops would have to fill out forms.

Response: If an independent contractor is providing more than one service to more than 960 acres held in trusts or by legal entities, then that independent contractor will have to complete the Form 7–21FARMOP. Even without this form requirement, we would want to review the associated farm operating arrangement to ensure it is not a lease for acreage limitation purposes.

Comment: Instead of creating a new section on farm operators, you should create a definition of ''economic interest.'' This would avoid the confusion regarding custom operators and place the responsibility of reporting accurately on the landowner/operator, not the district.

Response: We are not sure if the commenter is suggesting a change to the definitions in this rulemaking or to the information submitted by landholders on their RRA forms. We have not made any change to the final rule based on this comment; however, the question of who has all or a portion of the economic risk in a farm operating arrangement remains a key component of our review of farm operating arrangements.

428.4 Who Must Submit Forms Under this Part

This section establishes an RRA forms submittal requirement for farm operators who provide services to more than 960 acres held in a single trust or legal entity or any combination of trusts and legal entities. We have made several changes to this section of the final rule as compared to the proposed rule, primarily in response to comments received. Specifically, we have made it clear that farm operators will be submitting forms to districts, not directly to us. We have reviewed the references we included in the proposed rule to the ''exceptions'' provided in 43 CFR 426.18(g)(2) and (3) and determined adjustments were needed. We have limited which part owners of legal entities providing services to more than 960 acres held in trusts or by legal entities must submit a farm operator form. We have made it clear that farm operators will not be eligible to use a verification form, even if their farm operations do not change from year to year. Farm operators will also not be subject to the RRA forms requirement associated with landholding changes, if their farm operations change during a water year after they have submitted their RRA form for that year.

Paragraph (a) provides the general criteria as to which farm operators must annually submit RRA forms to districts. In the proposed rule, we referenced ''exceptions'' included in 43 CFR 426.18(g)(2) and (3). Upon review, we determined that we need to better explain the forms requirements concerning entities that are farm operators and are wholly owned subsidiaries, rather than simply referring to 43 CFR 428.18(g)(2). Accordingly, we have included that explanation as the new § 428.4(a)(2). The provisions of 43 CFR 426.18(g)(3)(i) (cannot utilize class 1 equivalency factors in determining if RRA forms must be submitted) apply to this new RRA forms submittal requirement without such being specified, since this final rule supplements 43 CFR part 426. The provisions of 43 CFR 426.18(g)(3)(ii) (part owners not considering certain involuntarily acquired land in determining if RRA forms must be submitted) do not apply to this final rule, because § 428.4(b) specifies which part owners of legal entities that are farm operators must submit RRA forms, regardless of how much land is attributed to the part owner in question. Consequently, we

removed all references to 43 CFR 426.18(g)(2) and (3) from the final rule.

Paragraph (b) continues to address the applicability of the RRA forms submittal requirements to indirect owners of a legal entity that is a farm operator and is required to submit RRA forms. We have limited the application of the RRA forms submittal requirements to only those part owners who owned the land the legal entity is now providing services to, when that land was excess and those part owners sold or transferred that land at an approved price.

Paragraph (c) is new in the final rule. It provides that a verification form cannot be used to meet a farm operator's annual RRA form submittal requirement.

Paragraph (d) is new in the final rule. It provides that once a farm operator has met his/her/its RRA forms submittal requirements for a water year, no additional RRA form needs to be submitted for that year, even if the farm operator experiences a change to the farm operating arrangements reported on the form that was submitted.

Comments Concerning § 428.4—Who Must Submit Forms Under this Part

Comment: We strongly support the proposal to expand information collection requirements to farm operators, since without this change, any meaningful enforcement of the acreage limitation provisions is impossible.

Response: We agree. The final rule retains the expansion of the information collection requirements to certain farm operators.

Comment: Regarding the 960-acre threshold for submission of forms, although the regulation requires reporting by operators of multiple holdings that total more than 960 acres, these holdings are limited to lands held by trusts and legal entities, leaving the situation of lands held by individuals unclear. We believe that trusts and legal entities and individuals should submit forms, so you can make the nonfull-cost eligibility determination as to all large scale operators.

Response: We have reviewed this matter and decided at this time not to further expand the information collection in the regulation to include farm operators providing services to more than 960 acres held by individuals or any combination of individuals, trusts, and legal entities. Nevertheless, just because such farm operators do not have to submit an RRA form, it does not mean their farm operating arrangements will not be audited when Reclamation becomes aware of their existence. On the contrary, we will audit such farm operators, and if we determine their farm operating arrangements are leases for acreage limitation purposes, we will apply the nonfull-cost entitlement accordingly. The same holds true for any legal entities that are farm operators, but would be limited recipients if they were landholders and are providing services to any acreage.

Comment: You should rewrite § 428.4(a)(1) to add the words ''directly or indirectly'' after ''services'' so it reads: ''You provide services directly or indirectly to more than 960 acres westwide . . .'' This is necessary because otherwise, operating companies could choose a new corporate shell for each 960 acres they operate. Subsection (b) tries to solve this problem, but does not because the triggering standard is in subsection (a).

Response: We have not incorporated this comment. However, we have explained how the parent entity of wholly owned subsidiaries must submit a Form 7–21FARMOP and include on that form all land to which its wholly owned subsidiaries are providing services.

Comment: All landholdings that farm more than 960 acres must have forms submitted which clarify whether there are farm operators or custom operators affiliated with that farm or operation. In the case of any landholding or farm that claims to have no farm operator subject to the new rules, yet reports one or more custom operators serving that farm, you should ensure that adequate documentation is provided to ensure the intent of the regulations is met, and there is no ''farm operator'' in fact.

Response: Any landholding that includes more than 960 acres (other than for a trust) must be in compliance with the current acreage limitation provisions. Accordingly, all ineligible excess land is not receiving Reclamation irrigation water, and any land selected as full-cost is either not receiving Reclamation irrigation water or the full-cost rate is being paid for the delivery of such water to that land. We see no value in auditing farm operating arrangements associated with such lands, since entering into a farm operating arrangement does not alter the fact that the land in question is either ineligible excess land or subject to the full-cost rate. A landholder who holds less than 960 acres westwide should not be responsible for determining if his/her/its farm operator is providing services to more than 960 acres westwide.

Comment: We believe the proposed rules impose significant and unnecessarily burdensome reporting requirements on ''farm operators.''

Response: We disagree. We estimate that the reporting burden would be increased by less than 200 hours (or on average 1 hour, 18 minutes per Form 7–21FARMOP) as a result of the final rule.

Comment: Section 428.4 is far too broad in its reach. It would be enough to limit the certification requirement to farm operators providing services to ''a single trust or legal entity.'' But then the section continues to require certification from such providers to ''any combination of trusts and legal entities.'' This language covers not only large trusts or other legal entities, but sweeps in every single testamentary trust and intervivos trust, no matter how small. Farm operators who think they are working only for a series of individuals or entities will become subject to the regulation without knowing it if some landowner dies leaving a testamentary trust. There are countless trusts and legal entities, including part-ownerships created through inheritance or other family arrangements that have nothing to do with large trusts created to hold excess land, and operated by the original owner.

Response: We have considered this issue and determined to make no change to the regulation. We do not need to collect additional information that only concerns the landholdings and operations of single trusts or legal entities that hold more than 960 acres. This is because we already know about all trusts that hold more than 960 acres, their farm operators have been identified, and any associated farm operating arrangements have been reviewed to determine if they are leases for acreage limitation purposes. As for legal entities, if a legal entity holds more than 960 acres, the land is either eligible excess due to an exception included in the acreage limitation provisions (e.g., the involuntary acquisition provisions), ineligible excess, or full-cost. Again, we do not need any additional information from such legal entities because the forms they already submit results in the determination of the eligibility of the land and the water rate to be paid, regardless of any existing farm operating arrangement.

The information we do not have concerns farm operators who are providing services to multiple landholders, the total of which would exceed the applicable nonfull-cost entitlement if the farm operating arrangement was determined to be a lease. We cannot make an exception for testamentary trusts or any other types of trusts from the RRA forms requirements,

because to do so would create a means for avoiding our intent to identify farm operators providing services to more than 960 acres held in any combination of trusts and legal entities. The RRA did not make any distinction between trusts established for families, inheritance purposes, etc., and we will not initiate such a distinction in these rules.

Comment: Requiring indirect owners of farm operators to submit forms under § 428.4 is burdensome and unnecessary. If indirect owners are shown on the farm operator's form, the only purpose served by indirect owner forms would be to determine if the indirect owner exceeds the acreage limitations through farm operator arrangements. To do this implies that all farm operators are lessees until proven otherwise. The RRA does not support this, or require it.

Response: We have incorporated this suggestion in the final rule. We have limited the requirement to submit an RRA form by part owners of legal entities who are farm operators to those part owners who formerly owned the land in question as excess and sold or transferred that land at an approved price. We need information from such part owners in order to administer § 428.9 of the final rule.

Comment: Determining who must submit forms will be very hard, if not impossible, for the districts.

Response: We realize that it will be harder for districts to identify farm operators who will need to submit RRA forms than to identify landowners and lessees. In order to facilitate this activity we encourage districts to provide information to all their landholders concerning the new requirements, especially those landholders who include information about farm operators on the RRA forms they submit. We have also changed the effective date to January 1, 2001, rather than 2000, to provide all parties an opportunity to prepare for the new requirements.

Comment: The landholder has the burden of identifying what farm operators must submit forms.

Response: We disagree. The farm operator is responsible for knowing how much land is held in trusts and by legal entities to which he/she/it provides services. If that acreage totals more than 960 acres, the farm operator must submit the new Form 7–21FARMOP. Farm operators are responsible for being aware of and in compliance with all statutory, regulatory, and other requirements that impact their activities. The landholder also may have contractual remedies against a farm operator whose failure to comply with legal requirements causes damages to a landholder. Moreover, the landholder is receiving the benefits of the Reclamation irrigation program and is responsible at all times for maintaining its farming enterprise in full compliance with existing law.

Comment: If the farm operator does not assume any risk in the growing, harvesting and sale of the crops, does the farm operator still have to comply with the proposed rules?

Response: Yes, a farm operator would still need to submit RRA forms if he/she/it provides services to more than 960 acres held in trusts or by legal entities.

Comment: Instead of requiring farm operators to file forms, you should add to the existing forms a requirement that the landowner identify anyone other than the lessee listed (if any) who has the use or possession of the property, is responsible for paying the operation expenses or is entitled to any of the profits. If there are questions about the arrangement disclosed, you have the authority to request copies of contracts, examine financial records, etc.

Response: We considered this approach, but decided against it. The alternative to requiring the submission of RRA forms from the farm operators in question is to request data on an as-needed basis and require landholders to provide information on their RRA forms about any farm operators with which they contract. We have been using this approach since 1988 and have determined that the approach taken in this rule will be more effective. Further, the approach suggested by the commenter places a greater burden on both the districts and Reclamation, than if certain farm operators are required to submit RRA forms. The commenter's approach also greatly increases the likelihood that all farm operators providing services to more than 960 acres westwide will not be identified. We need to identify those farm operators providing services to multiple landholdings, the total of which exceed 960 acres. Then we can determine if the arrangements under which the services are being provided are leases for acreage limitation purposes.

Comment: What determined that 960 acres should be the form submittal threshold for farm operators? If the reason for the 960 acres is to identify those who formerly owned lands as excess and are operating them again, the 960-acre form submittal threshold may not be sufficient for identification of such lands. Farm operators should be subject to the certification/reporting thresholds currently established.

Response: We chose the 960-acre forms submittal threshold for farm operators because it is the maximum acreage limitation entitlement. We agree that certain farm operators, if they were landholders, would have much lower acreage limitation entitlements applicable. However, we have determined at this time not to impose forms requirements on such farm operators. As for the excess land provision, we believe that the 960-acre forms submittal threshold for farm operators will help us find many of the farm operators who are directly providing services to their formerly excess land or indirectly providing those services as part owners of legal entities that are farm operators.

Comment: If the proposed rule is adopted, the submittal threshold for farm operators should not be less than 960 acres.

Response: We have not changed the forms submittal threshold in the final rule.

Comment: Landowners who wish to receive water should only have to file their eligibility papers one time, not every year, and require a refiling only when there is a change in ownership.

Response: This comment is outside of the scope of the proposed rulemaking and this final rule. RRA forms submittal requirements for landholders were reviewed and adjusted during the rulemaking that was completed on December 18, 1996. Annual RRA forms submission for all landholders remains a statutory and regulatory requirement. All exemptions from this requirement are provided in 43 CFR 426.18(g).

428.5 Required Information

This section specifies what information farm operators must submit. Paragraph (a) provides that we will determine what RRA form farm operators will complete, while paragraph (b) requires farm operators to include on that form all land to which they are providing services that is subject to the acreage limitation provisions.

Paragraph (c) provides a list of the information we will require farm operators to provide on their RRA forms. This list is not to be considered an all-inclusive list.

We made no changes to this section in the final rule as compared to the proposed rule.

Comments Concerning § 428.5—Required Information

Comment: The information you would request would provide you no benefit, and may potentially damage the parties providing it. This is an invasion of privacy, and farm operators and landowners may have more incentive to

avoid filing the forms than to comply, because of fear of adverse business consequences if the information is available to anyone that could misuse the information. For example, it is unlikely that a farm operator would be willing to disclose to its customers the names of all the other customers of that farm operator and a list of the lands owned or leased by those other customers. Similarly, landowners may be unwilling to allow a farm operator to disclose to another landowner the information about that landowner's operations—who determines when services should be performed, which services are provided to that landowner, etc.

Response: We contend the information we will collect from farm operators will be very useful. We do not believe the new RRA forms requirements are any more of an invasion of privacy than it is for a lessee who must provide information about the land being leased and the terms of the lease agreement. Section 224(c) of the RRA authorizes Reclamation to collect all data necessary to carry out the acreage limitation provisions. Therefore, if a farm operator wants to provide services to land that is subject to the acreage limitation provisions, that farm operator must be prepared to provide us with information, whether it be through the submittal of an RRA form or in response to a request for information that he/she/it receives. In addition, information provided by farm operators on Form 7–21FARMOP is protected by the Privacy Act of 1974 as is information provided by landholders on other RRA forms.

Comment: We generally agree with the listing of information you would collect on the farm operator forms, but you should clarify § 428.5(c)(7) to exclude the assignment of accounts receivable as collateral.

Response: We have considered this suggested change and decided to not include it in the final rule. We believe the provision in question is clear. It asks if the farm operating agreement itself can be used as collateral in any loan, not if the farm operator can assign accounts received as collateral.

Comment: You should not require farm operators to provide the following information: details on all lands that he or she works on, including legal descriptions and acreage; who decides what services are needed; a list of services provided for each parcel; whether he can use his agreement with the landowner as collateral for any loan; and whether he can be sued by the landowner. If you try to implement this, it will take another bureaucracy of people to administer it and check the forms.

Response: On the contrary, including all of this information on the form will help us effectively utilize our limited resources dedicated to acreage limitation administration and enforcement. The information we ask from farm operators is necessary so that we can prioritize our audit efforts in determining if farm operating arrangements are leases. Without some of the information, such as legal descriptions, we would not know if all the land was owned by one trust, related companies, etc. It should also be noted that this information needs to be provided to us when we audit such farm operators, even if we do not ask for it on an RRA form.

Comment: This information collection does not appear to address the issue of financial risk. If it is going to address the issue of who has use of the land, I think it should address financial risk, or else leave both issues to be decided through a review of the actual agreement.

Response: We think that many commenters have the belief that we will be able to determine if a farm operating arrangement is a lease for acreage limitation purposes simply by reviewing the information provided on the Form 7–21FARMOP. That is simply not the case. We will have to review associated farm operating documents (e.g., farm operating agreements, farm management agreements) before making such a determination. After we have some experience with the forms submitted by farm operators, we may revise those forms to include additional questions, some of which may be about financial risk. If we decide to revise the Form 7–21FARMOP in the future, we will provide the public with ample opportunity to comment through the process associated with the Paperwork Reduction Act of 1995.

Comment: Farm operator or custom operator information will be virtually impossible to acquire or verify.

Response: We disagree. Farm operators will submit forms, and then we can audit the farm operating arrangements to determine if they are leases, and thus, subject to application of the nonfull-cost entitlement. Verification of the information submitted will be possible by comparing the information on the Form 7–21FARMOP with the documentation associated with the farm operating arrangement and the information submitted on the landholders' RRA forms.

Comment: The reporting regulations ask the right questions regarding farm operations, but they do not necessarily ask those questions of all the right people. To avoid the problem of you having to survey all Reclamation-irrigated land that is not reported on by farm operators, I suggest you require that landowners subject to RRA reporting requirements also submit information about their farm operators. Those landowners who employ farm operators would have to supply the names, addresses, and other identifying information for these entities. Without this, you would remain virtually blind with respect to those farm operators who fail to report.

Response: Direct landowners have been required to provide information on their RRA forms concerning certain farm operators since the late 1980's. The required information has included the name, address, and telephone number for each farm operator by land parcel.

428.6 Where To Submit Required Forms and Information

This section specifies where farm operators are to submit their completed RRA forms. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

428.7 What Happens if a Farm Operator Does Not Submit Required Forms?

This section establishes what will happen if a farm operator does not submit the required RRA form. Paragraph (a) provides that if a farm operator does not submit the required RRA form, the district is not to deliver Reclamation irrigation water to the land in question and nobody is to accept delivery of such water to that land. We made no changes to this paragraph.

Paragraph (b) specifies that once the required RRA form is submitted, eligibility of the land in question to receive Reclamation irrigation water will be restored. We made no changes to this paragraph.

Paragraph (c) provides that we will impose the administrative fee defined in 43 CFR 426.20 if a farm operator fails to submit the required RRA forms and the land in question receives Reclamation irrigation water despite noncompliance with the forms requirements. We made changes to this paragraph to make it clear that we will determine the amount of any applicable administrative fee in the manner we do for landholders.

Comments Concerning § 428.7—What Happens if a Farm Operator Does Not Submit Required Forms?

Comment: A district is powerless to require compliance from a farm operator

that it has no relationship with. Districts have no legal ability to do so, and they do not want it. Districts have no way to identify farm operators within their service areas and will have no way of enforcing the proposed rules unless an operator voluntarily complies.

Response: We suggest that districts review RRA forms submitted by trusts and legal entities. That will provide an initial basis of who might be a farm operator that will be required to submit the new Form 7–21FARMOP, since landholders have been required to provide limited information concerning any operators for a number of years. The year 2000 can be used by districts to start reviewing such forms and preparing lists of farm operators who might need to be contacted. Then, starting with the 2001 water year, district staff can contact such operators to determine if they provide multiple services to more than 960 acres held in trusts or by legal entities, or simply send them a copy of the Form 7–21FARMOP with instructions.

Comment: Districts may be unfairly at risk for an administrative fee under the following example: Farm Operator X operates a 640 acre farm in District A and a 960 acre farm owned by a trust located in District B. If District A is unaware of the fact that the farm operator is operating more than 960 acres total, and they fail to get a form, then District A may be at risk for an administrative fee. This may also place the landowner at risk for full-cost charges.

Response: If the land in District A is held by a trust or legal entity, then the District A would be subject to receiving an administrative fee bill if Reclamation irrigation water is delivered to the land in question. District B would also be subject to such a bill, if it too delivered Reclamation irrigation water to Farm Operator X without a form being on file. At that point, the districts have the option of contacting the farm operator to collect the assessed administrative fee; how districts encourage payment is up to each district. The landowners will not be at risk for full-cost charges, because we no longer apply the compensation rate (full-cost) for instances of violations of RRA forms submittal requirements. However, if it turns out that a farm operating arrangement is a lease for acreage limitation purposes, then full-cost charges may apply. That would be the case regardless of whether the RRA forms submittal requirement applies to farm operators.

Comment: The proposed rules are unworkable for both districts and landowners. Farm operators are independent contractors and cannot be controlled by the farmers that hire them. Farmers have no way of correcting a problem caused by a farm operator failing to file forms other than firing them. Terminating contractors may be difficult, legally or practically.

Response: If a landholder is concerned about a farm operator being in compliance with the RRA forms requirements, that landholder has the option of including in any written farm operating agreement a requirement that the farm operator must be in compliance with those provisions. If a landholder cannot control or terminate their farm operator, the landholder's lack of control might indicate that the farming arrangement has characteristics of a lease.

Comment: The prohibition in § 428.7 against delivering water to land if a farm operator fails to submit forms is particularly harsh. It will take time after the landholders submit forms for an irrigation district to determine whether a farm operator has submitted their forms. To allow a district to determine which lands have become ineligible because of this failure, the submission date for farm operators' forms should be at least 60 days after the landholders submit their forms.

Response: We have considered this comment and decided not to incorporate it in the final rule. We encourage districts to take advantage of the delay in implementing this final rule, until the 2001 water year, to identify farm operators who may be subject to the new RRA forms requirement. Based upon more than a decade of administration of forms requirements, it is our experience that districts have proven effective in obtaining voluntary compliance. Moreover, when we discover a failure to comply with the forms requirement of this final rule during a water year (after irrigation water has been delivered), then we would make a ''final determination'' that the farm operator has not complied with this final rule. Such ''final determinations'' are subject to the notice and appeal provisions of 43 CFR 426.24.

428.8 What Can Happen if a Farm Operator Makes False Statements on the Required Forms

This section provides what action we can take if a farm operator makes a false statement on his/her/its RRA form. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

428.9 Farm Operators Who are Former Owners of Excess Land

This section establishes a restriction on former owners of excess land who sold or transferred such land at an approved price from becoming the farm operator of their formerly excess land, if that land is to be eligible to receive Reclamation irrigation water. This restriction is limited to land held in trust or by a legal entity and two exceptions are provided as explained below.

Paragraph (a) specifies that formerly excess land may not receive Reclamation irrigation water if that land is now held by a trust or legal entity and the individual or legal entity that formerly owned the land as excess and sold or transferred it at an approved price is the direct or indirect farm operator of that land.

Paragraph (b) provides two exceptions to this restriction: The land becomes exempt from the acreage limitation provisions or the full-cost rate is paid for Reclamation irrigation water delivered to such land. This paragraph also explains how the full-cost rate will be applied if a legal entity that is the farm operator has a part owner who formerly owned the land as excess and sold or transferred it at an approved price.

We have made grammatical changes to this section, and also added the words ''or transferred'' after the word ''sold'' in 428.9(a)(2), so that these regulations are consistent with part 426.

Comments Concerning § 428.9—Farm Operators Who are Former Owners of Excess Land

Comment: We agree with you clamping down on the operation of formerly excess land by those with ties to the former excess landowner. A situation where the prior owner of excess land serves as the current farm operator for a trust is a clear abuse of the RRA, and I applaud your decision to look past trust arrangements to the reality of the single underlying farm operation.

Response: We believe this provision will make our enforcement efforts under the RRA more effective.

Comment: With respect to the excess land provisions, I believe it is appropriate to extend the prohibition against receiving Reclamation water to farm operators operating land they formerly owned. However, the regulation appears to leave open the possibility that a simple corporate shell or other legal fiction could be used to allow continued operation by an entity controlled by the former owner of

excess land. You should modify the regulation to ensure that such transactions cannot be used to shield the former owner.

Response: We do not believe this result would occur because the proposed rule clearly refers to indirect farm operators in § 428.9(a)(3). Accordingly, we made no revisions to this section of the final rule.

Comment: We do not understand Interior's statement that the intent of the excess land provisions is not met in the example given in the proposed rule at 63 FR 64155. The farm operator would not earn a share of the profits or income on the land that was sold. If the farm operator is paid a fixed fee for services, and profits go to trust beneficiaries, why does this not meet the intent of reclamation law?

Response: The intent of the excess land provisions of Federal reclamation law is for the former owner of the excess land to be totally divested of any interest in excess land, if such land is to become eligible to receive Reclamation irrigation water when it is sold or transferred. The reason the excess land provisions were created was to provide farming opportunities to new family farmers. The intent of the excess land provisions cannot be met if the land is being sold or transferred to non-farmers, speculators, investors, absentee owners, etc., who then hire the former owner to farm the land for a fixed fee for service. The final rule strongly encourages the former owner of excess land to have only the most limited relationship with that land. Specifically, the former owner can provide one specialized, farm-related service to the new landholder as a custom service provider. If the new landholder believes the former owner is indispensable to the operation of the land, the full-cost rate can be paid for any Reclamation irrigation water delivered to that land.

Comment: The excess land provisions with respect to the operation of formerly excess land by a former owner are draconian. Exceptions should be made, such as when a farmer moves operations from one region to another. In order for the land to be profitable while the new operation is beginning, the farmer often leases land back to the previous landowner or lessee. The new owner should not be penalized for using the most qualified farm operator (the former owner).

Response: The excess land provision only applies to farm operators who are providing services to excess land they formerly owned and disposed of at an approved price. If the farm operator moves operations from one region to another, that farm operator is not likely to be providing services to land he/she/it formerly owned as excess and sold or transferred at an approved price. As for new owners utilizing the former excess landowner to farm the land, the entire point of the excess land provisions of Federal reclamation law is to provide farming opportunities for new family farmers, not to continue farming opportunities for the former landowner, now with the availability of Reclamation irrigation water. We would also like to note that 43 CFR 426.12(g) already prohibits that new owner from leasing the land to the former owner of that land when it was excess, unless the new owner and lessee do not intend to use Reclamation irrigation water or they intend to pay the full-cost rate.

Comment: You should not adopt the proposed rule, but if you do, the two exemptions provided should be the minimum. You should add at least one additional exemption: Expiration of the deed covenant associated with the sale of formerly excess land should negate application of the proposed rule. You should include this as § 428.9(b)(3)

Response: While we seriously considered adding this additional exemption, we have decided not to include any further exemptions in § 428.9(b) than those found in the proposed rule.

Comment: Section 426.14 of the current rules provides that nonexcess land acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise remains eligible to receive irrigation water for 5 years. During the 5-year period, you charge the same rate for water as you charged the former owner (unless the land becomes subject to full-cost pricing through leasing). Our question is that if the acquiring lender or landowner uses a farm operator on the involuntarily acquired land, will you price the water under the current rules, or will it be subject to § 428.9 (b)(2) of the proposed rules?

Response: The acquiring lender or landowner would be subject to § 428.9 in its entirety if they hire as a farm operator the former owner of that land when it was excess and who sold or transferred it at an approved price.

Comment: Section 428.9(b)(2), which requires districts to calculate separate water rates for each proportional owner or for different parcels owned by one landowner, exceeds your regulatory powers.

Response: Districts are already required to calculate separate water rates for different parcels owned by one landowner and for those parcels owned by proportional owners, as required by 43 CFR 426.12(g)(3). For example, if a landowner leases a portion of his land to a lessee who selects the land as full-cost, the district must apply the full-cost rate to only those portions of the landowner's land. In fact, except for limited recipients that did not receive Reclamation irrigation water on or before October 1, 1981, the nonfull-cost entitlement requires districts to apply the nonfull-cost rate to selected portions of a landholding and the full-cost rate to the rest of the land for any landholder whose westwide landholding exceeds the applicable nonfull-cost entitlement.

Comment: Requiring a farmer to fire a non-complying operator may limit or prohibit a farmer from employing someone with a specialized and necessary service, one that may not be easily replaced. The proposed rule leaves farmers at the mercy of operators that must be willing to comply with burdensome RRA rules, when these operators are not a problem according to reclamation law.

Response: While there may be situations where only one individual or legal entity has the knowledge and expertise to provide a specific, specialized farm-related service to land in an area, we believe such instances are rare. Nevertheless, if it is only one service that is being provided, other than management of the land, there should be no need to terminate the contract or arrangement, because such a individual or legal entity can probably be classified as a custom service provider as defined in § 428.3.

Comment: We are not aware of more than two or three farming operations where § 428.9 would apply. It appears to us that you have specifically targeted one company's farm operator arrangement with a specific trust in an attempt to appease certain environmental groups. Such a targeted rulemaking is abusive and clearly violates the equal protection provisions of the Constitution.

Response: This rule is not targeted at any particular arrangement. This rulemaking addresses the practice of landholders selling excess land at an approved price and then being hired by the new landholder to continue to farm the formerly owned land as a farm operator. We believe this practice has been used by some existing large trusts in the Central Valley Project. Without the finalization of the proposed rule, this practice may spread to other areas, thereby allowing excess landholders to fashion arrangements that permit them to continue substantially the same enterprise using subsidized water. By

eliminating any incentive for the excess landowner to maintain any interest, either property or contractual, with its formerly excess lands, we believe we will have furthered the policies set forth in Section 209 of the RRA and the excess land provisions of Federal reclamation law.

428.10 District's Responsibilities Concerning Certain Formerly Excess Land

This section specifies that districts are not to deliver Reclamation irrigation water to formerly excess land that is prohibited from receiving such water under § 428.9. We made no changes to this section in the final rule as compared to the proposed rule. We received no comments on this section.

428.11 Effective Date

This section provides details concerning the effective date of this final rule. We have made several changes to this section of the final rule as compared to the proposed rule, primarily in response to comments received and to reflect when the final rule is likely to be published in the **Federal Register**. Specifically, we decided to postpone the effective date for implementation of this rule until January 1, 2001.

Paragraph (a) provides a January 1, 2001, implementation date for all provisions of the final rule. However, our intent is to make this rule effective for the 2001 water year. Since there are a few districts that are subject to the acreage limitation provisions whose water years commence before January 1, we have recognized that fact by including an October 1, 2000, effective date for such districts concerning the forms requirements for farm operators.

As with the proposed rule, in paragraph (b) we make it clear that on January 1, 2001, the excess land provisions will apply to all farm operating arrangements then in effect and those that may be agreed to in the future. This has the effect of applying the excess land provisions of the final rule both prospectively to future farm operating arrangements and retroactively to those already in place starting on January 1, 2001.

Comments Concerning § 428.11—Effective Date

Comment: Regarding § 428.11, the second sentence seems to limit the applicability of this effective date to only one of the 10 subsections of the regulations. This is confusing and could lead to enforcement problems and possibly litigation over the intent of the regulations. We suggest you include the sentence in § 428.9, instead.

Response: In preparing the final rule, we have made it clear that all provisions of the final rule will be effective with the 2001 water year.

Comment: The January 1, 2000, effective date is not fair and does not allow enough time for landholders to make other farming arrangements to avoid cost implications. You should pick some later date to allow irrigation districts, landholders, and farm operators adequate time to adjust their operations to conform to the regulations. Many tree and vine operators have long-term operating agreements.

Response: In response to this and similar comments, we have postponed the effective date of the final rule until January 1, 2001.

Comment: Regarding § 428.11, your assertion that parties potentially affected by the regulations need merely make ''other farming arrangements'' before January 1, 2000, to avoid paying full-cost for water is unrealistic. There are many long-term contracts that cannot be easily terminated, and the result of terminating these contracts will significantly affect perfectly legitimate (from an RRA perspective) business relationships.

Response: As we stated above, the excess land provision is narrowly focused and will only affect land that is now held in trust or by a legal entity and was formerly owned as excess land by the current farm operator of that land. Nevertheless, we have changed the effective date for the rule to January 1, 2001.

Comment: You should have a phase-in period for the forms collection. We suggest that you do not apply full-cost or shut off water during the first year if any farm operator fails to file a form. You will not be harmed by the year delay in imposing penalties, and this would make it more fair for landholders and farm operators.

Response: Instead of having a phase-in period, we have changed the effective date to January 1, 2001, rather than 2000. It should be noted that we no longer apply the compensation rate (full-cost) when we find instances of RRA forms requirements being violated.

Comment: We suggest a 3-year implementation period, which would allow land owners, farmers, custom harvesters and farm operators time to sort out contractual matters, cropping questions and long-term financing.

Response: We believe that a 3-year implementation period is too long. However, we have changed the effective date for the rule to January 1, 2001.

Comment: You issued a memorandum to water districts dated February 1, 1999. The memorandum blurs the risk-based distinction between lessees and custom operators that has been the primary basis for determining who is a lessee since the adoption of the 1987 regulations. The terms defined in the memorandum as ''custom farming service,'' ''contract operator,'' and ''principal operator'' are not in the current regulations. The proposed rule defines the terms ''custom operator'' and ''farm operator'' similarly to the definitions in the memorandum. It appears you have begun to prematurely implement some of the new concepts and definitions contained in the proposed rule before the comment period closed and before the Commissioner has reviewed the comments, responded to them, and made a determination on the rule. We believe this conflicts with the Administrative Procedure Act and that it is improper for you to administratively direct water districts to use those terms until the rulemaking is complete. You should withdraw the memorandum.

Response: Clearly, the commenter misunderstands the purpose of the February 1, 1999 memorandum. The policy memorandum, dated February 1, 1999, was the most recent clarification of how Reclamation applies the acreage limitation provisions to sharecropping arrangements. Previously, we issued internal policy memoranda applying the criteria on what constitutes a lease under the RRA, as set forth in 43 CFR 426.6, to farming arrangements, including sharecropping. See Lease and Farm Operating Agreement Review Guidelines (April 1990); Applicability of the Reclamation Reform Act of 1982 to Sharecropping Arrangements (Sept. 28, 1993); Sharecropping and Custom Farming Services (Dec. 17, 1997). These memoranda do not address the same issues as those contained in the final rule.

Through data gathering, the final rule will assist us in identifying those farming operations that may constitute leases under the RRA. Neither the final rule nor the memoranda change the analysis for determining what is a lease. They make no change to the economic risk plus use or possession test currently set forth in 43 CFR 426.6.

While it is true that some of the definitions used in the prior memoranda are also used in the final rule, principal operator, farm operator, and custom operator are not new concepts or terms. We used similar definitions, where possible, to provide consistency and avoid confusion for those implementing

the RRA. However, to the extent that any definitions in the policy memoranda conflict with those promulgated in the final rule, the rule controls. Accordingly, there is no reason to withdraw the February 1, 1999 memorandum because it deals with whether sharecropping arrangements constitute leases under the acreage limitation provisions. The final rule does not affect those criteria or determinations.

Comment: A few commenters addressed the substance of the February 1, 1999 memorandum, asserting that the memo defined principal operator but did not provide any implications of being so identified, that the risk-based test was being abandoned, and that the determination of reasonable and ordinary crop shares to pay for services fluctuated and depended on political changes or the amount of pressure being exerted by opponents of the Reclamation program.

Response: As discussed above, the February 1, 1999 memorandum addresses issues distinct from the final rule. It is beyond the scope of this rulemaking to address the substance of the February 1, 1999 memorandum. Any substantive concerns should be addressed in another forum.

IV. Procedural Matters

National Environmental Policy Act

We have analyzed this regulation in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and Departmental Manual 516 DM. In the proposed rule, we stated that the regulation was categorically excluded from NEPA review under 40 CFR 1508.4, Departmental Manual 516 DM 2, Appendix 1, paragraph 1.6, and 516 DM 6, Appendix 9, paragraph 9.4A.1. However, we received comments that suggested we needed further environmental review. In order to be responsive to public comments, we have therefore prepared an Environmental Assessment (EA) and have found that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under Section 102(2)(C) of NEPA [42 U.S.C. 4332(2)(C)]. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in the Administrative Record for this rulemaking. We invite you to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action meeting any 1 of 4 criteria specified in the E.O. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. We have therefore submitted the regulation to OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies that this document 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.*). We provide some 140,000 western farmers with irrigation water. We estimate that out of this number, fewer than 200 entities, not necessarily small entities, could be affected by the regulation. The effect on most of these entities starting on January 1, 2001, would be limited to the annual completion of RRA forms. The annual costs of completing such forms is estimated to total $4,200. The costs to the districts will be limited to distributing the RRA forms which is a nominal additional cost, if any, since districts are required to distribute RRA forms to all landholders anyway. In addition, some districts would collect a few additional forms and place information concerning farm operators on a new tabulation sheet. Considering that there are very few farm operators Westwide providing services to more than 960 acres held in trusts and by legal entities, such costs to most districts will be zero and Reclamation estimates that no district will incur more than $1,000 in additional costs due to the expansion of the information collection requirements.

For some of these entities, the farm operator was also the owner of the land in question when the land was ineligible excess land or under a recordable contract. In cases where such a farm operating arrangement is still in place on January 1, 2001, or is implemented on or after that date, the full-cost rate will apply to all deliveries of Reclamation irrigation water to such land. However, the landholder in question can avoid paying the full-cost rate by hiring a different farm operator who did not formerly own the land in question as excess. We believe it is extremely likely that trusts and legal entities will take action to have any formerly excess land in their possession farmed by farm operators who did not own such land as ineligible excess or under recordable contract. In such cases, the trustees of trusts and the owners of legal entities may incur two types of opportunity costs: (1) Additional costs if economies of scale cannot be realized because the trustee or owner cannot select a certain farm operator to provide services to their land without incurring the full-cost rate for Reclamation irrigation water and (2) additional costs because the trustee or owner was not able to hire the farm operator with the most knowledge of the land in question without incurring the full-cost rate for Reclamation irrigation water.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This regulation:

(1) Will not have an annual effect on the economy of $100 million or more. The regulation could affect up to an estimated 200 farms, but the effects would not approach $100 million or more. For the 1996 water year, Reclamation collected nearly $6.5 million in full-cost charges westwide. These collections were from many more landholders with more associated acreage than would be affected by the final regulations. However, these regulations will not result in any immediate application of the full-cost rate, unless a farm operator is determined to actually be a lessee for acreage limitation purposes or the farm operator also was the former owner of the land when it was excess. In the case of a determination that the farm operating arrangement is a lease for acreage limitation purposes, that determination would be made with or without this rule. Nevertheless, the intent of this rulemaking is to provide a more efficient and effective way to find farm operators that should be audited. Consequently, it is likely that we will find more farm operating arrangements that are leases for acreage limitation purposes and, therefore, subject to application of the nonfull-cost entitlement than we would without this rule. But without the information collection, we simply do not know how many that may be and how much additional full-cost will be collected. Therefore, the initial economic effect is

estimated at approximately $7,000; the cost of the expanded information collection requirements and these costs include additional costs to Reclamation for the design and distribution of the new forms.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There could be an economic effect on less than an estimated 200 farms, but we do not anticipate that this will cause any increase in costs or prices.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. At most the regulation will only affect a small sector of the farming industry, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This regulation requires a new information collection from 10 or more parties, and thus a submission under the Paperwork Reduction Act was required. On July 14, 1999, OMB approved the new Declaration of Farm Operator Information (Form 7–21FARMOP) as part of the RRA forms package for landholders, under control number 1006–0005. On the same date, OMB approved new tabulation forms called Tabulation G [1. District Summary of Certification and Declaration Forms, Tabulation G of ''Declaration of Farm Operator Information'' Forms (Form 7–21FARMOP) and 2. District Summary of Reporting and Declaration Forms, Tabulation G of ''Declaration of Farm Operator Information'' Forms (Form 7–21FARMOP)] as part of the RRA forms package for districts, under control number 1006–0006. Both clearances expire on December 31, 2001.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The rule would not affect the roles, rights, and responsibilities of States in any way. The rule would not result in the Federal Government taking control of traditional State responsibilities, nor would it interfere with the ability of States to formulate their own policies. The rule would not affect the distribution of power, the responsibilities among the various levels of government, nor preempt State law. The rule modifies existing provisions for administering the RRA by requiring a new collection of information and extending the excess land provisions to certain farm operators.

Executive Order 12630, Takings

In accordance with E.O. 12630, the regulation does not have significant takings implications. Thus, a takings implication assessment is not required. This final rule will not result in imposition of undue additional fiscal burdens on the public. The regulation will not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, the regulation will not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law.

Unfunded Mandates Reform Act of 1995

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The regulation does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The regulation will require certain farm operators, which are not small governments, to submit RRA forms. The excess land provisions of the regulation will not affect small governments. The potential effects of this final rule will not amount to costs of more than $100 million per year.

Executive Order 12988, Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this regulation does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O.

List of Subjects in 43 CFR Part 428

Agriculture, Irrigation, Reclamation, Reporting and recordkeeping requirements, Water resources.

Dated: January 18, 2000.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation adds a new part 428 to title 43 of the Code of Federal Regulations as follows:

PART 428—INFORMATION REQUIREMENTS FOR CERTAIN FARM OPERATIONS IN EXCESS OF 960 ACRES AND THE ELIGIBILITY OF CERTAIN FORMERLY EXCESS LAND

Sec.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; 32 Stat. 388, as amended.

§ 428.1 Purpose of this part.

This part addresses Reclamation Reform Act of 1982 (RRA) forms requirements for certain farm operators and the eligibility of formerly excess land that is operated by a farm operator who was the landowner of that land when it was excess.

§ 428.2 Applicability of this part.

(a) This part applies to farm operators who provide services to:

(1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or

(2) The holdings of any combination of trusts and legal entities that exceed 960 acres.

(b) This part also applies to farm operators who provide services to formerly excess land held in trusts or by legal entities if the farm operator previously owned that land when the land was ineligible excess or under recordable contract.

(c) This part supplements the regulations in part 426 of this chapter.

§ 428.3 Definitions used in this part.

Custom service provider means an individual or legal entity that provides one specialized, farm-related service that a farm owner, lessee, sublessee, or farm operator employs for agreed-upon payments. This includes, for example, crop dusters, custom harvesters, grain haulers, and any other such services.

Farm operator means an individual or legal entity other than the owner, lessee, or sublessee that performs any portion of the farming operation. This includes farm managers, but does not include

spouses, minor children, employees for whom the employer pays social security taxes, or custom service providers.

We or *us* means the Bureau of Reclamation.

You means a farm operator.

§ 428.4. Who must submit forms under this part.

(a) You must submit RRA forms to districts annually as specified in § 428.6 if:

(1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; or

(2) You are the ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries that provide services in total to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities.

(b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually, if any of the land to which services are being provided by that legal entity is land that the part owner formerly owned as excess land and sold or transferred at an approved price.

(c) If you must submit RRA forms due to the requirements of this section, then you may not use a verification form for your annual submittal as provided for in § 426.18(l) of this chapter to meet the requirements of this section.

(d) If you must submit RRA forms solely due to the requirements of this section, then once you have met the requirement found in paragraph (a) of this section you need not submit another RRA form during the current water year, even if you experience a change to your farm operating arrangements. Specifically, the requirements of § 426.18(k)(1) of this chapter are not applicable.

§ 428.5 Required information.

(a) We will determine which forms you must use to submit the information required by this section.

(b) You must declare all nonexempt land to which you provide services westwide.

(c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:

(1) Identifier information, such as your name, address, telephone number;

(2) If you are a legal entity, information concerning your organizational structure and part owners;

(3) Information about the land to which you provide services, such as a legal description, and the number of acres;

(4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;

(5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;

(6) If you provide different services to different land parcels, a list of services that you provide to each parcel;

(7) Whether you can use your agreement with a landholder as collateral in any loan;

(8) Whether you can sue or be sued in the name of the landholding; and

(9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

(a) If you do not submit required RRA form(s) in any water year, then:

(1) The district must not deliver irrigation water before you submit the required RRA form(s); and

(2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).

(b) After you submit all required RRA forms to the district, we will restore eligibility.

(c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e) of this chapter. We will determine these costs in the same manner used to determine costs for landholders under §§ 426.20(a)(1) through (3) of this chapter.

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

(a) Land held in trust or by a legal entity may not receive irrigation water if:

(1) You owned the land when the land was excess, whether or not under recordable contract;

(2) You sold or transferred the land at a price approved by Reclamation; and

(3) You are the direct or indirect farm operator of that land.

(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) The full-cost rate is paid for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

(a) All provisions of this part apply on January 1, 2001, except:

(1) For those districts whose 2001 water year commences prior to January 1, 2001, the applicability date of §§ 428.1 through 428.8 is October 1, 2000.

(b) On January 1, 2001, this part applies to all farm operating arrangements between farm operators and trusts or legal entities that:

(1) Are then in effect; or

(2) Are initiated on, or after, January 1, 2001.

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Federal Register

Wednesday,
January 26, 2000

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Deferred Research and Development Costs; Proposed Rule

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 1999–013]

RIN 9000–AI62

Federal Acquisition Regulation; Deferred Research and Development Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify and simplify the ''Deferred research and development costs'' cost principle.

DATES: Interested parties should submit comments in writing on or before March 27, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.1999–013@gsa.gov Please submit comments only and cite FAR case 1999–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–013.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the cost principle at FAR 31.205–48, Deferred research and development costs, to clarify and simplify its contents. The Councils propose to—

(a) Delete the second sentence addressing precontract costs, as these types of costs are adequately addressed at FAR 31.205–32, Precontract costs;

(b) Revise the last sentence to more clearly indicate that incurred costs in excess of the contract price or grant amount for research and development (R&D) effort are unallowable and accordingly, not reimbursable by the Government; and

(c) Make several editorial revisions.

The Councils initiated this rule to consider whether the cost principle was duplicative of FAR 31.205–32, Precontract costs, and FAR 31.205–23, Losses on other contracts, and therefore, should be deleted in its entirety from the FAR. They concluded that the second sentence could be deleted since precontract costs are already addressed in FAR 31.205–32. However, they also concluded that the last sentence, disallowing the reimbursement of R&D costs in excess of the contract price and grant amount, was not duplicative of FAR 31.205–23, and should be retained at FAR 31.205–48, Deferred research and development costs.

A historical review of certain court rulings has disclosed that the Court of Claims and the Armed Services Board of Contract Appeals (ASBCA) tend to regard the excess of costs incurred over the contract price in R&D contracts, not necessarily as a loss but as an amount that, under certain circumstances, may be capitalized and amortized over future benefitting contracts. This view was held in a decision of the Court of Claims (*Bell Aircraft* v. *U.S.* 120 Ct. Cl. 398 (1951)) and in ASBCA decisions in the cases of *Kellett Aircraft Corp.* ASBCA No. 5658, 60–1 BCA ¶2584, *Sperry Rand Corp., Ford Instrument Co. Division* ASBCA 8689, 66–1 BCA ¶5403, and *G.C. Dewey* ASBCA 13221, 69–1 BCA ¶7732. Since the courts had ruled that the excess costs did not represent a ''loss,'' these types of costs were considered outside the purview of Armed Services Procurement Regulation (ASPR) 15–205.19, Losses on Other Contracts (currently known as FAR 31.205–23, Losses on other contracts.) Therefore, Defense Procurement Circular #95 dated 29 November 1971, added ASPR 15.205–49, Deferred Research and Development Costs, to the ASPR to explicitly make these types of deferred R&D costs unallowable. The third sentence of FAR 31.205–48 currently reflects this policy. Based on this historical review, the Councils concluded that elimination of this sentence could permit contractors to recover costs in excess of the contract price or grant amount for R&D effort under certain conditions in which the courts have ruled that the ''excess'' does not represent a ''loss''. Therefore, this cost principle should remain in the FAR.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subpart 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.205–48 to read as follows:

31.205–48 Deferred research and development costs.

Research and development, as used in this subsection, means the type of technical effort described in 31.205–18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort,

such excess is unallowable under any other Government contract.

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Wednesday,
January 26, 2000

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440
Weatherization Assistance Program for Low-Income Persons; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

RIN 1904–AB05

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) proposes to amend the regulations for the Weatherization Assistance Program for Low-Income Persons. DOE is proposing changes based on a series of open forum discussions with numerous State and local stakeholders as well as through program experience gained since issuance of the final rule on June 5, 1995. These proposed changes add clarifying language, delete obsolete language, and propose certain regulatory changes to improve the overall operation of the Program to assist State and local agencies in administering the Program. Further, these proposed changes will give States and local agencies additional flexibility in addressing the particular weatherization needs of their low-income citizens while achieving better program results with less paperwork.

DATES: To ensure your comments are considered, we must receive three copies of your comments on or before March 27, 2000. You may present oral views, data, and arguments at the public hearing which will be held in Washington, DC, on March 3, 2000. If you would like to speak at this hearing, contact Mr. Greg Reamy at (202) 586–4074. Each oral presentation is limited to 10 minutes. The hearing will last as long as there are persons requesting an opportunity to speak.

ADDRESSES: Send written comments to Greg Reamy, Weatherization Assistance Program Division, US Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, We will hold a public hearing at the following address: U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC. Please bring three copies of the prepared oral statement to the hearing. You may read and copy written comments received, a copy of the public hearing transcript, and any other docket material received as a result of this notice at the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9:00 a.m.–4:00 p.m., Monday through Friday except Federal holidays. For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking (Opportunities for Public Comment).

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4074.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) proposes amendments to revise the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP). This Program is authorized by title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561 *et seq.* The proposed changes are necessitated by the evolution of the program since the last publication of the rule on June 5, 1995 (60 FR 29470). These changes would help States by clarifying sections to the rule, thereby enhancing the interpretation and application of the program requirements. Some of the definitions in § 440.3 would be clarified and, where needed, new definitions would be added to provide a clearer and more concise meaning to States and local agencies who must interpret these regulations. Other sections applying to energy audits and allowable expenditures would be clarified to enhance their meanings; and certain obsolete items would be deleted. Other regulatory changes proposed in today's rulemaking would: add new and eliminate obsolete terms in the Program definitions; add ''household with a high energy burden'' and ''high residential energy user'' as new categories for those receiving priority service; create a separate cost category for health and safety expenditures and the purchase of vehicles by local agencies; reduce the eligibility criteria for certain large multi-family buildings to 50 percent; establish new minimum energy audit criteria for the Program; and revise the date for reweatherization from 1985 to 1993.

Prior to developing and issuing this proposed rulemaking, DOE consulted with its primary stakeholders, representatives of both State and local agencies, to listen to their concerns about what issues they wanted DOE to consider. The Program has evolved from a relatively simplified approach of providing service to low-income homes with unskilled labor, installing low-cost/no cost retrofits, to a program that conducts advanced diagnostics and installs cost-effective energy conservation materials. The increased demand to maintain highly-trained crews has placed added strain on State and local agencies efforts to sustain a quality level of service to its low-income clients. Many of the changes proposed today would help lessen the administrative burden and provide flexibility for State and local agencies to incorporate the ever-changing technical enhancements as they become available. These proposed rule changes would also make State and local agencies better-suited to attract non-Federal leveraged resources into their programs. This proposed rule attempts to address as many of those concerns as possible. Many of the concerns that the stakeholders raised to DOE were not of a regulatory nature and were addressed administratively through program guidance documents. Other concerns were statutory in nature and formed the basis of the legislative initiative proposed to the Congress.

In addition to the proposed regulatory changes, the Department proposed on September 20, 1999 several statutory changes developed during discussions with State and local stakeholders. These suggested changes are part of the Department's legislative initiative and are currently under consideration by the Congress. These proposed statutory changes are: eliminate the requirement that 40 percent of the funds used to weatherize a home be spent for materials; restructure the method by which States compute their average cost per home and eliminate the separate per dwelling unit average for capital intensive improvements; and increase the average cost per home to $2500 beginning in 2000 to include the cost of making capital intensive improvements.

II. Amendments to the Weatherization Assistance Program

Section 440.1 Purpose and Scope

DOE proposes to delete the first sentence in the Scope and Purpose since this information is duplicative of what is stated elsewhere in the proposed rule.

DOE proposes to amend the Purpose and Scope to add to the priority categories the terms ''high residential energy user'' and ''household with a high energy burden.'' By adding these two categories, States would be better able to prioritize their low-income clients by targeting those experiencing high energy costs and burden, thereby addressing those units with the greatest potential for energy savings. Additionally, by including these two categories, State and local agencies would be better able to coordinate services with other Federal programs and leveraging opportunities. The current priority categories of elderly, persons with disabilities, and families with children would continue and remain unchanged. Definitions for these two terms are discussed in § 440.3.

Section 440.3 Definitions

DOE proposes to add the term ''balance point temperature'' to describe the outdoor temperature below which the furnace of a dwelling must operate to maintain comfort during the winter, and above which the air conditioner must operate during the summer. The balance point temperature is used to calculate heating and cooling degree day weather data as described in more detail in § 440.21.

DOE proposes a definition for ''electric base-load measures'' to describe energy use outside of the traditional weatherization approach to heating and cooling and building envelope measures. As the Program evolves over the next several years into a whole house approach, DOE believes that electric base-load measures, which account for more than half the energy used in a typical household, are important when considering total residential energy use. Limited lighting measures are currently permitted in the Program and in the near future DOE may consider including other electric base-load measures such as the replacement of certain appliances.

DOE proposes to add the term ''high residential energy user'' which means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State. The proposed definition for this category would permit State and local agencies to better coordinate their activities and resources with many utility programs.

DOE also proposes to add the term ''household with a high energy burden'' which means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State. The proposed definition for this category would give States and local agencies greater flexibility in determining priority service for those households that may not have traditional priority individuals such as the elderly, persons with disabilities, or families with children, but are experiencing a particular hardship due to their high energy costs.

DOE proposes to substitute the term ''persons with disabilities'' for the term ''handicapped'' to reflect the current accepted reference. The definition remains unchanged.

DOE considered both State and local agency concerns over the definition of ''low-income'' and the difficulties in effectively administering, coordinating, and leveraging between various Federal low-income programs using different definitions. However, in a review of the statute and the legislative history of the Program, DOE chose not to amend the existing definition. The DOE Weatherization Assistance Program was established to serve the neediest Americans. To expand the eligibility requirements to facilitate coordination with other Federal programs either through increasing the poverty level to 80 percent, permitting census tracking of neighborhoods, or allowing area average median income levels would change the scope and purpose of the Program. More importantly, expanding the eligibility criteria would substantially increase the number of households eligible for assistance which already stands at over 29 million. DOE addresses this issue in detail in program guidance.

Section 440.14 State Plans

DOE proposes to reorganize and revise § 440.14 to eliminate unnecessary and duplicative information. DOE agrees with the States that these requirements are no longer needed and will reduce paperwork and time in the production of the annual State plan. In reorganizing this section, DOE proposes grouping items together relating to the public hearing. Items specific to the development of the State plan would also be placed together. The information for the production schedule is proposed to be projected annually instead of quarterly and include the number of previously weatherized homes expected to be weatherized.

DOE proposes to eliminate § 440.14(b)(2), (6), (7), and (b)(8)(iii). This information requirement resulted in the States providing little more than meaningless estimates to DOE. States will continue to report to DOE the number of persons served in each of these groups.

DOE proposes to retain the requirement for information on the number of dwelling units expected to be weatherized for each area, but eliminate the expected number of previously weatherized units for each area. States have no idea how many previously weatherized homes can be expected to be weatherized for each area of the State.

In § 440.14(b)(6)(xi) DOE proposes to retain the requirement that States identify and describe the type of audit that meets the criteria outlined in § 440.21 and that DOE has approved. However, the reference to Project Retro-Tech or another DOE-approved audit is proposed to be eliminated in this section as well as in § 440.21.

Section 440.15 Subgrantees

DOE proposes to amend § 440.15(a)(3)(iv) to eliminate the reference to ''JTPA'' and replace it with ''other Federal or State training programs.'' The JTPA Federal program is repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.16 Minimum Program Requirements

DOE proposes to amend § 440.16(d) to eliminate the reference to ''JTPA'' and replace it with ''other Federal or State training programs.'' The JTPA Federal program is repealed effective July 1, 2000 pursuant to Pub. L. 105–220. States should describe any ''other Federal or State training program'' they will be using in their annual State plans as sources of labor.

DOE proposes to add clarifying language to § 440.16(b) to allow States to include ''high residential energy user'' and ''household with a high energy burden'' as priority groups among those receiving weatherization services. The use of the two new priority categories is not mandatory. By adding these two categories, DOE is providing State and local agencies with expanded flexibility to choose the categories for priority which best serve their respective programs.

Section 440.17 Policy Advisory Council

DOE proposes to amend § 440.17(a) to include the language ''or a State commission or council'' which meets the criteria in § 440.17(a)(1), (2) and (3). Many State agencies which operate the DOE Weatherization Assistance Program have existing commissions or councils which review and approve policies and plans for many other Federal programs. By utilizing these existing bodies, States

would eliminate the need to establish a separate Weatherization Policy Advisory Council which would essentially perform the same function. States which opt to utilize an existing commission or council would have to certify to DOE, as a part of the annual application, the council or commission as an independent reviewer of activities for the Program. Therefore, any person(s) employed in any State Weatherization Program can also be a member of an existing commission or council but would have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

Section 440.18 Allowable Expenditures

DOE proposes to delete from § 440.18(b) and (b)(2)(i) references to (c)(15), the cost of eliminating health and safety hazards from the amount of funds used to determine the average cost per home. State and local agencies have indicated to DOE that including the cost of health and safety into the amount of funds that can be spent on a home severely restricts their flexibility to operate effectively their programs. In providing for this flexibility, DOE agrees that excluding these costs from the average cost per home would afford States and local agencies the opportunity to fund advanced technology practices into their weatherization programs while reducing their administrative burden.

DOE proposes to revise § 440.18(c)(6) to read ''Purchase or annual lease of tools, equipment, and the annual lease of vehicles.'' DOE proposes to add a new (c)(16) as a separate line item for the cost of purchasing vehicles. In doing so, DOE would remove the cost of purchasing vehicles from the amount of funds used to determine the average cost per home. State and local agencies argue that having the cost of these vehicles included in the average cost per home calculation placed an undue burden on them. For some local agencies, purchasing vehicles force them to seek low cost weatherization candidate homes in order to maintain operation while ignoring potentially higher energy savings homes.

The proposed rule would require States to include in their calculations of average per unit costs the costs of leased vehicles, but would now permit States to exclude the cost of purchased vehicles from such calculations. This proposal is being made at the urging of States and local agencies that expressed concerns about the distortionary effects that the purchase price of new vehicles had on average per unit costs. For small agencies, the purchase of a new vehicle could represent a substantial fraction of the average cost of weatherizing units in the year the vehicle is purchased, which sometimes means that the amount of weatherization performed on any unit would have to be arbitrarily limited in order to stay under the Federally-specified cap on the average cost per unit. DOE is concerned, however, that provisions permitting the exclusion of certain vehicle costs, but not others, would unnecessarily distort the decisionmaking of States and local agencies.

One possible alternative to this approach would be to permit States to exclude from their average per unit cost calculations that portion of the value of any large capital assets that remained at the end of the funding year. This would permit States to include in their average cost calculations only that fraction of the cost of a new vehicle which was actually ''used'' during the current year. This approach might also permit states to exclude part or most of the purchase price of other large capital investments that have many years of useful life. Such an approach would not affect the ability of States or local agencies to use current funds to pay for the full purchase cost of such investments. DOE solicits comments on its proposal to exclude the cost of purchased vehicles, as well as on this alternative.

DOE proposes to amend § 440.18(e)(2)(iii) by extending the date by which homes can be reweatherized from 1985 to 1993. Previously, DOE extended this date from 1975 to 1985 based on the evolution of the Program. Between 1975 and 1979, the Program addressed primarily building envelope measures. In 1985, the Program expanded to place more emphasis on mechanical measures, including furnace efficiency modifications. Since the last rulemaking which introduced new criteria for advanced energy audits, virtually all States have improved their energy auditing techniques. DOE acknowledges this overall program improvement by the States and is confident that by extending the date to 1993, those homes weatherized between 1985 and 1993 would provide an even greater opportunity to achieve increased energy efficiency. DOE also reminds States that homes which become candidates for reweatherization would have a new energy audit performed and that audit would take into consideration any previous weatherization improvements done on the home.

Section 440.19 Labor

DOE revises § 440.19 by deleting references to JTPA and replacing it with ''other Federal or State training programs.'' The JTPA Federal program is repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.21 Standards and Techniques for Weatherization

DOE is proposing to rename, reorganize, and revise this entire section. The proposed name change more accurately reflects the subject matter of § 440.21. The other major changes eliminate the base audit criteria and make the waiver audit criteria the minimum criteria for an energy audit used in the Program. In its final rule published on March 4, 1993 (58 FR 12525), DOE provided for a waiver of the 40-percent material cost requirement described in § 440.18(a) for those States that adopted advanced energy audit procedures. Today, virtually all of the States have incorporated an approved waiver audit and received a waiver of this requirement from DOE. Within the next year, all States will be using an approved waiver audit. DOE is proposing to make the existing waiver energy audit requirements the new minimum standard for all energy audit procedures. The 40 percent material cost requirement and the waiver provisions have become unnecessary and their suggested elimination from the statute is discussed later in this proposed rule. States and local agencies have made great strides in improving the energy auditing techniques used in their programs during this decade. Investments in time and resources have paid dividends in the form of greater energy efficiency and savings on the types of materials and the installation techniques used in the Program.

To implement this change, DOE proposes to delete all references to Project Retro-Tech audit procedures and the simplified cost-effectiveness tests used with Project Retro-Tech. DOE is proposing that all energy audits require calculation of a savings-to-investment ratio for weatherization measures, and assignment of priorities based on the resulting figures consistent with the life-cycle cost methodology developed by DOE's Federal Energy Management Program and the National Institute of Standards and Technology (NIST). DOE is also proposing that all energy audit procedures require a similar calculation to determine the overall cost effectiveness of the ''total conservation investment'' including incidental repairs. As in the current rule, the effect of explicitly including incidental repairs is that the extent of such repair costs would be limited by the extent of offsetting cost savings.

The procedures and required assumptions for the life-cycle cost methodology are described in the ''Life-Cycle Costing Manual for the Federal Energy Management Program,'' which is published by NIST. ''The Annual Supplement of NIST Handbook 135 and SP 709, Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis'' is updated annually to provide an adjusted discount rate based on an average of recent U.S. Treasury bonds of various maturities (less inflation as estimated by the President's Council of Economic Advisers), as well as adjusted, regional, energy cost escalation rates.

The NIST handbook was revised in 1995 to incorporate several changes reflecting the eight years of experience since the 1987 revision. DOE proposes to replace the existing references in § 440.21 to U.S. Treasury bonds, the Economic Report of the President's Council of Economic Advisers, and the DOE Energy Information Administration with citation of the NIST life-cycle costing manual and its annual supplement as a convenient source of discount and fuel cost escalation rates for States. DOE proposes to maintain the States' discretion to choose a reasonable discount rate higher than the one provided in the annual supplement.

In its 1993 Notice of Proposed Rulemaking, DOE allowed States to disregard the energy cost escalation rates if they thought that local energy costs would not rise faster than the rate of general price inflation over the long term. At the time, fuel costs were projected to increase, and giving this discretion allowed States to require of their subgrantees cost-effectiveness standards that were more stringent than the Federal standards. With the cost of some major fuel types now projected to decrease over time, disregarding fuel cost adjustment rates could over-estimate the cost-effectiveness of energy conservation measures. For this reason, DOE is proposing to require States to use the fuel cost escalation rates/indices in the NIST annual supplement.

DOE is proposing to include in paragraph (d), the sentence, ''The lifetime of materials must not exceed the remaining useful life of the dwelling,'' to acknowledge that the low-income housing stock served by some programs is in poor condition. A weatherization measure may have a savings-to-investment ratio exceeding one assuming an economic life of twenty years for that material, but a savings-to-investment ratio of less than one in light of a remaining useful dwelling life of, for example, ten years.

DOE is proposing to include in § 440.21(f)(1) the phrase ''using generally accepted engineering methods'' to remind States to use reasonable energy-estimating methods and assumptions to account for the interaction among weatherization measures.

Paragraph (h) describes the proposed requirements for energy audit procedures that do not pertain to life-cycle costing methods. In paragraph (h)(1), DOE is proposing to substitute the phrase ''climatic data'' for the existing ''number of heating or cooling degree days'' to acknowledge that other types of weather data besides heating and cooling degree days can be used in the estimation of fuel cost savings.

DOE is also proposing to include language in paragraph (h)(1) to encourage States to set the balance point temperature(s) used in conjunction with heating and cooling degree data to more reasonably reflect the outside temperatures which require operation of heating or cooling equipment to maintain comfort. Heating degree days are computed by subtracting the average daily temperature from a balance point temperature, which has traditionally been 65° F. The traditional heating degree day balance point temperature assumes that the furnace needs to run at outside temperatures less than 65° F. In reality, the furnace is typically not needed until the outside temperature drops below around 60° F due to the heat generated by lights and people. Similarly, air conditioning is not usually required until outside temperatures exceed traditional cooling degree day balance points by about 5 to 10° F. Encouraging States to set balance points to more reasonably reflect their housing stock and climate would reduce the overestimation of energy savings for most measures, which would more accurately model their true cost-effectiveness.

The State Energy Efficiency Programs Improvement Act of 1990, which amended 42 U.S.C. 6861 *et seq.*, stated that energy audit procedures should ''establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency.'' DOE interprets this language, in part, to mean that advanced energy audit procedures should consider energy efficiency as well as total energy savings. For example, replacing an existing space heater being used to heat a single room, with a more energy efficient central furnace, capable of heating the whole house, would probably increase energy use even as it improved energy efficiency. The occupants would also be better able to use the entire dwelling unit. Unless undertaken for health and safety reasons, this measure is to be cost justified by the audit. Addressing energy efficiency in this case would require a cost justification that compares the energy usage of the central unit to the energy usage of heating the entire home with space heaters.

The existing rule language addressing this issue states that energy audit procedures must ''consider the rate of energy use,'' which does not clearly describe the need to look at both energy efficiency and total energy savings. To more directly address situations similar to the space heater example, DOE is proposing instead to include in paragraph (h)(2) the phrase ''and energy requirements.'' This proposed change combines the requirement to determine the existing energy use with the need to determine existing energy requirements from actual energy bills or by generally accepted engineering calculations. As in the space heater example, the energy requirements of a dwelling unit may exceed its existing energy use.

Proposed paragraph (h)(7) reminds States that DOE would have to approve an energy audit for each major dwelling type covered by the State's weatherization program in light of the different energy audit requirements of single-family dwellings, multi-family buildings, and mobile homes.

In paragraph (i), DOE is proposing language that clarifies the type of information DOE requires to approve State priority lists for similar dwelling units. When States submit to DOE their request for priority list approval, they often do not provide sufficient details. For example, inadequate information is provided to explain how dwellings covered by the priority list were established. They also do not tell how the subset of similar dwellings used to develop the priority list was determined, or adequately describe the circumstances that will require a site-specific audit in lieu of the priority list. The increased energy savings resulting from advanced energy audit procedures could be compromised by priority lists that are not based on truly typical housing stock or used without comprehensive guidelines that tell an auditor when atypical circumstances require a site-specific audit.

In § 440.21(k), to make the revalidation of priority lists more straightforward, DOE is proposing to require States to submit to DOE for approval every five years their complete energy audit procedures including priority lists and lists of general heat waste reduction materials. To revalidate their priority lists, States would have to

re-run their energy audit on a subset of the similar dwellings that the priority list covers. States have made the logical argument that their housing stock and typical housing types have not changed in five years. However, technologies, relative costs, and auditing tools do change. Revalidating priority lists every five years is meaningless if States merely resubmit their original list and indicate that nothing has changed. DOE encourages the continual improvement of audit tools as evidenced by new versions of the National Energy Audit (NEAT) over the years. The best and most current audit software should be used in developing priority lists. Since the latest version of a State's audit software may not have specific DOE approval, it makes sense for the DOE approval process to update the energy audit, priority lists, and lists of general heat waste reduction measures every five years.

Furthermore, DOE is proposing that new versions of energy audit software or manual methods released after a State-specific DOE approval, other than the NEAT and the Mobile Home Energy Audit (MHEA) developed by DOE, be re-approved by DOE before a State adopts a new version. Since DOE controls the content of NEAT and MHEA, new versions of these two software packages are designed to comply with the requirements of § 440.21; thus no pre-approval would be needed. However, DOE has no such control over the content of new versions of other energy audit software. To ensure that States' energy audit procedures continue to comply with § 440.21, language is proposed that would require States to get DOE approval for any and all specific versions of energy audit software and manual methods before a State adopts the energy audit.

While not a part of this proposed rule, DOE may propose in the future to require States to include overhead charges (such as costs for supervisory personnel, tools, vehicles, etc.) in the savings to investment ratio calculations for individual weatherization measures. Such costs are a significant fraction of the total costs of weatherizing individual homes and should, therefore, be considered in the assessment of the relative costs and benefits of measures. States are now permitted, but not required, to include such overhead costs in their saving to investment ratio calculations. These costs might be incorporated in these calculations through the use of a standard percentage to adjust the material and labor costs currently used or States and local agencies might develop more sophisticated approaches to including overhead costs. DOE urges States to consider such overhead costs now. In developing any future proposal to require the inclusion of overhead costs, DOE intends to solicit the views of States or local agencies that have already attempted to incorporate such costs, as well as the views of other stakeholders. DOE is particularly interested in receiving information that indicates how the consideration of such overhead costs affects the overall cost-effectiveness of State and local weatherization efforts. DOE would welcome comments on this issue as a part of this proposed rule.

Section 440.22 Eligible Dwelling Units

DOE proposes to amend § 440.22(b)(2) to add certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units are to be occupied by income-eligible households. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before weatherization. This exception would apply only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies would be better-suited to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions.

III. Other

A. Legislative Initiative

On September 20, 1999, the Department proposed a legislative initiative for consideration by the Congress to make certain statutory changes to the Program based on discussions held with State and local stakeholders. The suggested statutory changes are: (1) Eliminate the requirement in § 440.18 that 40 percent of the funds used to weatherize a home be spent for materials; (2) restructure the method in § 440.18 by which States compute their average cost per home by increasing the average cost per home to $2500 beginning in 2000; and (3) eliminate the separate per dwelling unit average in § 440.18 for capital intensive improvements and include capital intensive costs as a part of the average costs. If this legislative proposal is enacted, DOE will publish implementing regulatory amendments for public comment.

B. Inclusion of Preamble Language From Previous Rulemakings

DOE plans to include in the preamble of the final rule clarifying language on several areas of the program regulations where no actual changes were made. This action will provide States and local agencies the benefit of explanatory language used in the preambles of previous rulemakings which are still applicable today. This is necessary since many State and local staffs have changed several times over the years and much institutional knowledge has been lost. A comprehensive final rule will provide Federal, State, and local agency staff a central document for program regulatory information. This will also help in providing uniform interpretation of the regulations at all levels of the Program.

IV. Opportunities for Public Comment

A. Participation in Rulemaking

The Department encourages public participation in this rulemaking. The Department has established a period of 60 days following publication of this notice for persons to comment on this notice of proposed rulemaking. You may review all public comments and other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice of proposed rulemaking.

B. Written Comment Procedures

Interested persons and organizations are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rulemaking. Please provide three copies of your comments to the address indicated in the **ADDRESSES** section of this notice of proposed rulemaking. DOE will consider all timely-submitted comments and other relevant information before issuing a final rule.

C. Public Hearing

1. Request To Speak Procedures

The time and place of the public hearing are indicated in the **DATES** and **ADDRESSES** sections of this notice. The Department invites any person or organization having an interest in the proposed rulemaking to request to make an oral presentation. Your request should be directed to DOE at the address indicated in the **ADDRESSES** section of this notice of proposed rulemaking. You should bring three copies of your statement to the hearing.

2. Conduct of the Hearing

DOE will designate an official to preside at the hearing. This will not be

an evidentiary or judicial-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those conducting the hearing may ask questions. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations.

DOE will prepare a transcript of the hearing. DOE will retain the transcript and other records of this rulemaking and make them available for public inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice of proposed rulemaking. Any person may purchase a copy of the transcript from the transcribing reporter.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

V. Procedural Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rulemaking would amend 10 CFR part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of low-income citizens and to make other changes designed to streamline and update DOE's weatherization assistance program. The proposed rule was developed following extensive consultation with State and local stakeholders, and DOE does not think the proposed rule would have any adverse economic impact on any small governments, organizations or businesses. Accordingly, DOE certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

This proposed rulemaking has been reviewed according to the requirements of the Department's regulations (10 CFR Part 1021) implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* This rulemaking would amend 10 CFR Part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of their low-income citizens and to make other changes designed to streamline and update DOE's weatherization assistance program. The Department has determined that this proposed rulemaking is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR Part 1021 (rulemaking interpreting or amending an existing regulation, no change in environmental effect.) Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The proposed rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations

Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

VI. Other Federal Agencies

DOE provided draft copies of the proposed rule to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmers Home Administration. We have received no comments. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to § 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has made no comments.

VII. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-Energy, Grant programs-Housing and community development, Persons with disabilities, Housing standards, Indians, Reporting and recordkeeping requirements, weatherization.

Issued in Washington, DC, on January 18, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend Part 440 of Title 10, Code of Federal Regulations, as set forth below.

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

Authority: Title IV, Energy Conservation and Production Act, (42 U.S.C. 6861 *et seq.*), as amended; Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*).

2. Section 440.1 is revised to read as follows:

§ 440.1 Purpose and scope.

This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reducing their total residential expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

3. In § 440.3, remove the definition for ''JTPA'' and ''Handicapped Person'' and add the following definitions in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

Balance point temperature means the outdoor temperature below which the furnace of a dwelling must operate to maintain comfort during the winter, or above which the air conditioner must operate during the summer.

* * * * *

Electric base-load measures means measures which address the energy efficiency and energy usage of lighting and appliances.

* * * * *

High residential energy user means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State.

Household with a high energy burden means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State.

* * * * *

Persons With Disabilities means any individual—

(1) Who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973,

(2) Who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or

(3) Who is receiving benefits under chapter 11 or 15 of title 38, U.S.C.

* * * * *

4. Section 440.14 is revised to read as follows:

§ 440.14 State plans.

(a) Before submitting to DOE an application, a State must provide at least 10 days notice of a hearing to inform prospective subgrantees, and must conduct one or more public hearings to receive comments on a proposed State plan. The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them. The State must prepare a transcript of the hearings and accept written submission of views and data for the record.

(b) The proposed State plan must:

(1) Identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount each will receive;

(2) Address the other items contained in paragraph (c) of this section; and

(3) Be made available throughout the State prior to the hearing.

(c) After the hearing, the State must prepare a final State plan that identifies and describes:

(1) The production schedule for the State indicating projected expenditures and the number of dwelling units, including previously weatherized units which are expected to be weatherized annually during the program year;

(2) The climatic conditions within the State;

(3) The type of weatherization work to be done;

(4) An estimate of the amount of energy to be conserved;

(5) Each area to be served by a weatherization project within the State, and must include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the program year; and

(iii) Sources of labor.

(6) How the State plan is to be implemented, including:

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;

(ii) An explanation of the method used to select each area served by a weatherization project;

(iii) The extent to which priority will be given to the weatherization of single-family or other high energy-consuming dwelling units;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;

(viii) The average amount of the DOE funds specified in § 440.18(c)(1) through (9) to be applied to any dwelling unit;

(ix) The average amount of DOE funds applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d);

(xi) Procedures for determining the most cost-effective measures in a dwelling unit;

(xii) The definition of ''low-income'' which the State has chosen for determining eligibility for use statewide in accordance with § 440.22(a);

(xiii) The definition of ''children'' which the State has chosen consistent with § 440.3; and

(xiv) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

5. Section 440.15 is amended by revising paragraph (a)(3)(iv) as follows:

§ 440.15 Subgrantees.

(a) * * *

(3) * * *

(iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.

* * * * *

6. Section 440.16 is amended by revising paragraphs (b) and (d) to read as follows:

§ 440.16 Minimum program requirements.

* * * * *

(b) Priority is given to identifying and providing weatherization assistance to:

(1) Elderly persons;

(2) Persons with disabilities;

(3) Families with children;

(4) High residential energy users; and

(5) Households with a high energy burden.

* * * * *

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, other Federal or State training program workers, to work under the supervision of qualified supervisors and foremen;

* * * * *

7. In § 440.17 paragraph (a) introductory text is revised and paragraphs (b) and (c) are added to read as follows:

§ 440.17 Policy Advisory Council.

(a) Prior to the expenditure of any grant funds, a State policy advisory council, or a State commission or council which serves the same functions as a State policy advisory council, must be established by a State or by the Support Office Director if a State does not participate in the Program which:

* * * * *

(b) Any person employed in any State Weatherization Program may also be a member of an existing commission or council, but must abstain from reviewing and approving activities associated with the DOE Weatherization Assistance Program.

(c) States which opt to utilize an existing commission or council must certify to DOE, as a part of the annual application, of the council's or commission's independence in reviewing and approving activities associated with the DOE Weatherization Assistance Program.

8. Section 440.18 is amended by revising paragraph (a), removing the phrase ''and (c)(15)'' in the introductory text to paragraph (b) and in paragraph (b)(2)(i); revising paragraph (c)(6); adding paragraph (c)(16); and revising ''September 30, 1985'' to read ''September 30, 1993'' in paragraph (e)(2)(iii) to read as follows:

§ 440.18 Allowable expenditures.

(a) States must spend an average of at least 40 percent of the funds provided them for weatherization materials, labor and related matters listed in paragraphs (c)(1) through (9) of this section. DOE may approve a State's application to waive the 40 percent requirement under § 440.21.

* * * * *

(c) * * *

(6) Purchase or annual lease of tools and equipment and the annual lease of vehicles;

* * * * *

(16) The cost of purchasing vehicles, except that any purchase of vehicles must be referred to DOE for prior approval in every instance.

* * * * *

9. Section 440.19 is revised to read as follows:

§ 440.19 Labor.

Payments for labor costs under § 440.18(c)(2) must consist of:

(a) Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and

(b) Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which perform weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other Federal or State training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

10. Section 440.21 is revised to read as follows:

§ 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) through (g) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (h) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (i) and (j) of this section describe the use of priority lists and lists of presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraphs (k) and (l) of this section explain that a State's energy audit procedures, priority lists, and lists of general heat waste reduction materials must be re-approved by DOE every 5 years.

(b) State and local agencies may only purchase weatherization materials which meet or exceed standards prescribed and listed in Appendix A to this part with funds provided under this part. However, States may submit to DOE an unlisted material for review and approval.

(c) Except for materials to eliminate health and safety hazards allowable under § 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective by meeting a savings-to-investment ratio that is greater than or equal to one. The savings-to-investment ratio of an individual weatherization material or package of weatherization materials is the net fuel cost savings over the lifetime of the material(s), discounted to present value, divided by the material, installation, and related costs as defined in paragraphs (e) and (g) of this section.

(d) The net fuel cost savings over the lifetime of an individual weatherization material or package of weatherization materials must be discounted using the DOE discount rate from the Annual Supplement to NIST Handbook 135,

Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis (NISTIR 85–3273–14). The discount rate and regional fuel cost adjustment rates/indices provided in the annual supplement must be used in accordance with the procedures in NIST Handbook 135, Life-Cycle Costing Manual for the Federal Energy Management Program. The lifetime of materials must not exceed the remaining useful life of the dwelling. In their computation of savings-to-investment ratios, States:

(1) May keep the discount rate constant up to 5 years and may use a reasonably higher real discount rate subject to a ceiling of 10 percent and a floor of 3 percent;

(2) May keep the fuel cost adjustment rates/indices constant up to 5 years; and

(3) Must use figures for the lifetime of the materials and for the cost of materials and cost of the installation of the materials that are generally accepted in the relevant trade.

(e) In calculating the savings-to-investment ratio of an individual weatherization material, the denominator must include the costs for materials, labor, and on-site supervisory personnel to be claimed as allowable under § 440.18(c)(1), (2), and (7), and any other significant, related cost that a State requires to be included.

(f) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their savings-to-investment ratios according to paragraphs (c) through (e) of this section after:

(1) Adjusting those savings-to-investment ratios for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and

(2) Eliminating any weatherization material if its savings-to-investment ratio, as adjusted under paragraph (f)(1) of this section, is less than one.

(g) In calculating the savings-to-investment ratio of a package of weatherization materials to be installed in an eligible dwelling unit, the denominator must include the costs for materials, labor, on-site supervisory personnel, and incidental repairs to be claimed as allowable under § 440.18(c)(1), (2), (7), and (9), and any other significant, related cost that a State requires to be included. To ensure that the total conservation investment in a dwelling unit has a positive rate of return, the numerator of the overall savings-to-investment ratio must include the cumulative net fuel cost savings of all weatherization materials installed in the dwelling unit, discounted to present value according to paragraphs (c) and (d) of this section and adjusted for interaction among energy efficiency measures, if any, according to paragraph (f) of this section.

(h) The energy audit procedures also must—

(1) Compute the cost of fuel saved per year by taking into account the climatic data of the area of where the dwelling unit is located, where the balance point temperature(s) of the dwelling unit represents conditions when operation of heating or cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;

(2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;

(3) Address significant heating and cooling needs;

(4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;

(5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under § 440.16(h);

(6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and

(7) Be specifically approved by DOE for use on each major dwelling type covered by the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

(i) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (h) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.

(j) Subject to DOE approval, a State may use as a part of an energy audit a list of presumptively cost-effective general heat waste reduction weatherization materials. States must show these materials are cost-effective in typical dwelling units for major dwelling unit types in the State based on documentation of analytic reports, published articles, sample energy calculations, or a representative number of site-specific energy audits. States must also describe the circumstances under which such materials may be presumed cost-effective without need for further site-specific audit justification.

(k) States must resubmit their energy audit procedures to DOE for approval every 5 years including the current version of the energy audit software or manual methods used by the State. New versions of energy audit software or manual methods released after State-specific DOE approval, other than the National Energy Audit (NEAT) and the Mobile Home Energy Audit (MHEA) developed by DOE, must be re-approved by DOE before adoption by a State.

(l) Priority lists and lists of general heat waste reduction materials developed in accordance with paragraphs (i) and (j) of this section, if applicable, must also be resubmitted to DOE for approval every 5 years. Priority lists and lists of general heat waste reduction materials must be revalidated by conducting a representative sample of site-specific energy audits with the version of energy audit software or manual methods that the State submits for DOE approval in accordance with paragraph (k) of this section.

11. Section 440.22 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 440.22 Eligible dwelling units.

* * * * *

(b) * * *

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building:

* * * * *

[FR Doc. 00–1721 Filed 1–25–00; 8:45 am]

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Wednesday,
January 26, 2000

Part V

Department of Education

Even Start Statewide Family Literacy Initiative Grants; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.314B]

Even Start Statewide Family Literacy Initiative Grants

AGENCY: Department of Education.

ACTION: Notice of deadline for third stage of applications for assistance under the Even Start Statewide Family Literacy Initiative grant authority for fiscal year 1999, and information regarding certain cost issues for those grants.

SUMMARY: The Secretary of Education announces a third stage, and deadline for that third stage, for States to apply for a fiscal year (FY) 1999 new award under the Even Start Statewide Family Literacy Initiative grant authority. The Secretary also provides information about the authorization of certain pre-award costs for grant recipients, and the applicability of the waiver authority under section 14401 of the Elementary and Secondary Education Act (ESEA) to the requirement that only non-Federal funds be used as matching resources for the grant.

Eligible Applicants: One State office or agency from each State, the District of Columbia, and Puerto Rico, provided that the applicant jurisdiction did not receive an award of funds in the second stage of this FY 1999 competition.

Deadline for Transmittal of Applications in Third Stage of Competition: The deadline for State offices and agencies to submit their Even Start Statewide Family Literacy Initiative applications for the third stage of this grant competition is March 31, 2000.

Available Funds: The Secretary estimates that there will be $2,039,499 available for awards in the third stage of this FY 1999 competition.

Matching and Use of Fund Requirements: A State receiving a grant for an Even Start Statewide Family Literacy Initiative must make available non-Federal contributions (cash or in-kind) in an amount at least equal to the Federal funds awarded under the grant. These non-Federal contributions may be from State or local resources, or both. Grantees may not use grant funds for indirect costs, either as a direct charge or as part of the matching requirement.

Estimated Number of Awards During Second and Third Stages of Competition: second stage—28; third stage—6–10. (No States qualified for awards during the first stage of this competition.)

Note: The Department is not bound by any estimates in this notice. The Secretary originally estimated a total of between 40–52 awards, with an estimated average size for an award of $186,000 in Federal funds. No states qualified for awards during the first stage of the competition. The Secretary anticipates awarding funds to 28 recipients during the second stage of competition. Based upon these awards, the Secretary revises the estimate of the number of total awards to 34–38 awards for FY 1999, with an estimated 6–10 awards during the third stage of the competition.

Project Period: 24 months (comprised of two one-year budget periods).

Application, Absolute Priority, and Selection Criteria: The Department will use the same application (including the absolute priority and selection criteria) that it used for the first two stages of this competition. That application, entitled ''Notice inviting State applications for new awards for fiscal year (FY) 1999 funds for Even Start Statewide Family Literacy Initiative grants,'' was published in the **Federal Register** on February 24, 1999, at 64 FR 9229. In addition, the Notice of Final Priority for Fiscal Year 1999, published in the **Federal Register** on February 24, 1999, at 64 FR 9228, will apply to this third stage. You may obtain a copy of that application and Notice of Final Priority for Fiscal Year 1999 from the contact person listed below. The application and notice of final priority also are available in the Department's on-line library at http://www.ed.gov/GrantApps/#84.314B.

FOR FURTHER INFORMATION CONTACT: To obtain further information, or a copy of the application and Notice of Final Priority, contact Tanielle Johnson, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6132; telephone (202) 205–9588; or Email *tanielle—johnson@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. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Department published the FY 1999 notice inviting applications for Even Start Statewide Family Literacy Initiative competitive grants in the **Federal Register** on February 24, 1999 (64 FR 9229), and published a Notice of Final Priority for those grants at the same time (64 FR 9228). The notice inviting applications established two opportunities for States to submit their applications—a first stage deadline of February 24, 1999, and a second stage deadline of August 20, 1999, which was extended to October 15, 1999, in the **Federal Register** on June 25, 1999 (64 FR 34225) to give States additional time to prepare their applications. This notice establishes a third opportunity for States that have not received a grant in this competition to submit applications. The third stage deadline is March 31, 2000.

The Department recognizes that it takes States a significant amount of time to form the required consortium of State-level programs and build the strong working collaborations that they need to plan a high-quality statewide family literacy initiative that realistically addresses a State's unique educational needs. Some States have advised the Department that they have convened their consortia, are developing those collaborations, and have been actively planning their initiatives for a number of months, but that they were not able to prepare their applications completely by the deadline for the second round. Other States applied for funds in the second stage of this competition, but did not receive an average score of 70, which the Department established as the minimum score.

The Secretary believes that States may benefit from additional technical assistance on developing strong proposals to strengthen and expand family literacy services in their States. In addition, these States will be able to benefit from technical assistance on meeting the absolute priority in the application, under which applicants must address the new statutory requirement in the Even Start law to develop performance indicators to measure adult and child outcomes. Development of these performance indicators is not only required by the Even Start law, but is an important part of a State's family literacy accountability system.

Sufficient funds will remain after awards are made in the second stage of this competition for a small number of additional States with high-quality applications to receive awards. These grants can be an important catalyst and resource in helping States strengthen and expand family literacy services, and develop a coordinated system of performance indicators for adults and children receiving family literacy services. Therefore, the Department announces a third opportunity for States to submit their applications under this competition for FY 1999 funds. The Secretary encourages States that have

not yet received a grant in this competition to apply for these collaboration funds to strengthen and expand family literacy services in their States.

Technical assistance

The Department provided a variety of technical assistance opportunities to all States following the first stage of this competition. That technical assistance, in which many States participated, included: application preparation workshops, distribution of detailed written application preparation guidance, on-site assistance, individual telephone consultations with contractors, and review and comment by contractors on draft applications. The Department offered these types of technical assistance to all States, and informed those States that the provision of this assistance did not ensure the applicant of funding nor bind the Department to funding any draft proposal. The Department advised applicants that the actual funding of their proposals would be based upon the evaluation of those proposals by a panel of experts based on the selection criteria and procedures published in the original notice inviting grant applications. The Department intends to provide technical assistance opportunities to all States that wish to apply in the third stage of this competition.

Cost issues

On June 25, 1999, the Department published a notice in the **Federal Register**, 64 FR 34225, that included the following information about cost issues for these grants.

Pre-award costs

The Department's regulations already authorize grant recipients to incur allowable pre-award costs up to 90 calendar days before the grant award (34 CFR 75.263 and 74.25(e)(1)). In addition, for this competition, the Secretary will authorize grant recipients to use grant funds to pay certain pre-award costs incurred more than 90 days before the date of the grant award but no earlier than the date of the initial notice inviting grant applications (February 24, 1999). Those authorized pre-award costs are the necessary and reasonable costs to establish, convene, and facilitate the required consortium's work in creating the plan for the proposed statewide family literacy initiative. States incur all pre-award costs at their own risk, in that the Secretary is under no obligation to reimburse these costs if for any reason the State does not receive an award or receives an award that is less than anticipated and inadequate to cover these costs.

Waiver applicability

A State that receives a grant for an Even Start Statewide Family Literacy Initiative must contribute an amount from non-Federal sources, in cash or in kind, at least equal to the Federal funds awarded under the grant. Drawing on non-Federal contributions is important to building successful collaborative statewide efforts to strengthen and expand family literacy services. However, identifying sufficient resources to meet this requirement may be difficult in some instances. In those cases, if the State educational agency (SEA) is the applicant State office or agency, the SEA may request from the Secretary a waiver under section 14401 of the ESEA of the requirement that only non-Federal funds may be used to match the Federal award. Such a waiver, if approved, would allow that State to use Federal resources (such as Head Start, Title I, Adult Education Act, Individuals with Disabilities Education Act, and State grants under the Reading Excellence Act), in addition to non-Federal resources, to meet the matching requirement.

Any waiver request must meet the required criteria in section 14401 by, among other things, identifying how the waiver would contribute to improvements in teaching and learning. Applicants seeking a waiver of the requirement for non-Federal matching resources should include their waiver request with their application. To receive assistance concerning a waiver request, potential waiver applicants may call the Department's Waiver Assistance Line at (202) 401–7801 or 1–800–USA–LEARN, or the program contact above. Waiver guidance, including information about preparing a request, is also available in the Department's on-line library at http://www.ed.gov/flexibility.

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Program Authority: 20 U.S.C. 6362(c).

Dated: January 20, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–1742 Filed 1–25–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
January 26, 2000

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1 and 52
Federal Acquisition Regulation; FAR Drafting Principles; Proposed Rule

Department of Defense

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 52

[FAR Case 1999-610]

RIN 9000-AI66

Federal Acquisition Regulation; FAR Drafting Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR). The proposed rule adds FAR drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users.

DATES: Interested parties should submit comments in writing on or before March 27, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1999–610@gsa.gov.

Please submit comments only and cite FAR case 1999–610 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 1999–610.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Parts 1 and 52 are amended to enhance a common understanding of how the Federal Acquisition Regulation is drafted. The proposed rule adds drafting principles in section 1.108 and amends FAR 1.105–2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule only addresses drafting principles and does not impose any additional requirements on Government offerors or contractors. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 1999–610), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1 and 52

Government procurement.

Dated: January 21, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 1 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 1 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.105–2 by revising paragraphs (a) and (b)(2) to read as follows:

1.105–2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) * * *

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumerics using the following sequence: (a)(1)(i)(A)(*1*)(*i*).

3. Add section 1.108 to read as follows:

1.108 FAR conventions.

The following conventions provide guidance for interpreting this FAR regulation:

(a) *Words and terms.* Definitions in part 2 apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see 1.102–4(b)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the published change; and

(2) Contracting officers may, at their discretion, include the changes in any existing solicitation, and, with appropriate consideration, any contract.

(e) *Statutory citations.* Statutory citations in this regulation include all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action unless another party is expressly cited.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.101 in paragraph (a) by revising the definition ''Substantially as follows''; and by revising paragraph (d) to read as follows:

52.101 Using part 52.

(a) * * *

Substantially as follows or *substantially the same as*, when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition. Any variation must include the salient features of the FAR provision or clause, and must be consistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

* * * * *

(d) *Introductory text.* Within subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

* * * * *

5. Amend section 52.104 by revising paragraph (a) to read as follows:

52.104 Procedures for modifying and completing provisions and clauses.

(a) The Contracting Officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) ''The Contracting Officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause''; or

(2) ''The contracting officer may substitute the words 'task order' for the word 'Schedule' wherever that word appears in the clause.''

* * * * *

6. Amend section 52.105 by revising paragraph (a) to read as follows:

52.105 Procedures for using alternates.

(a) The FAR accommodates a major variation in a provision or clause by use of an alternate. The FAR prescribes alternates to a given provision or clause in the FAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled ''Alternate I,'' ''Alternate II,'' ''Alternate III,'' etc.

* * * * *

7. Revise section 52.200 to read as follows:

52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)), and gives a cross-reference to the location in the FAR that prescribes its use.

[FR Doc. 00–1853 Filed 1–25–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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.