AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

4–5–00 **Wednesday**
Vol. 65 No. 66 **Apr. 5, 2000**
Pages 17755–17986

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 65 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche **202–512–1800**
Assistance with public subscriptions **512–1806**
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche **512–1800**
Assistance with public single copies **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche **523–5243**
Assistance with Federal agency subscriptions **523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 18, 2000

WHERE: Conference Room, Suite 700
Office of the Federal Register
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 65, No. 66

Wednesday, April 5, 2000

Agricultural Marketing Service
RULES
Spearmint oil produced in Far West, 17756–17758
PROPOSED RULES
Walnuts grown in—
California, 17809–17811

Agriculture Department
See Agricultural Marketing Service
See Grain Inspection, Packers and Stockyards Administration

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Wine; labeling and advertising—
Flavored wine products, 17839–17840

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17884–17885

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17885

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Oregon, 17855
Virginia, 17855

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 17766
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 17936

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
See Technology Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
New York Cotton Exchange—
Cotton No. 1; stocks simultaneously included in both Exchange-certified stocks and Commodity Credit Corporation loan; prohibition, 17859–17860

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
Sound recordings, public performance; service definition, 17840–17841

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17860–17861

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
High-energy density and laser-matter interaction studies, 17861
Meetings:
Asia-Pacific Economic Cooperation Energy Ministers Conference, 17861–17862

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 17768–17773
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Spinosad, 17773–17775
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 17841–17842
Water supply:
National primary drinking water regulations—
Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule; meeting, 17842
NOTICES
Confidential business information and data transfer, 17869
Pesticide, food, and feed additive petitions:
BioTEPP, Inc., 17869–17872
Interregional Research Project (No. 4), 17872–17876

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Information Systems Technical Advisory Committee, 17855–17856

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 17763–17766
PROPOSED RULES
Airworthiness directives:
Airbus, 17822–17827
Boeing, 17827–17829
McDonnell Douglas, 17818–17821
NOTICES
Aviation Rulemaking Advisory Committee; task assignments, 17936–17938
Environmental statements; availability, etc.:
Piedmont Triad International Airport, NC, 17938

Meetings:
RTCA, Inc., 17938–17939
Passenger facility charges; applications, etc.:
Huntsville International Airport, AL, 17939
Nashville International Airport, TN, 17939–17940

Federal Communications Commission
RULES
Radio stations; table of assignments:
Various States, 17775–17776
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17876
Reporting and recordkeeping requirements, 17876–17879
Rulemaking proceedings; petitions filed, granted, denied, etc., 17879

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 17863
Meetings:
Regional Transmission Organizations; regional collaborative workshops, 17863–17864
Applications, hearings, determinations, etc.:
Canyon Creek Compression Co., 17862
Pacific Gas & Electric Co., 17862
PacifiCorp, 17862
Trailblazer Pipeline Co., 17862–17863

Federal Maritime Commission
NOTICES
Agreements filed, etc., 17879
Ocean transportation intermediary licenses:
Providence Services Inc. et al., 17879–17880

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Canadian Pacific Railway, 17940

Federal Trade Commission
NOTICES
Premerger notification; reporting and waiting period requirements:
Hart-Scott-Rodino Act—
Interpretation 17; banking and nonbanking businesses; acquisition filing obligations; premerger antitrust review, 17880–17883

Fish and Wildlife Service
RULES
Endangered and threatened species:
Northern Idaho ground squirrel, 17779–17786

General Accounting Office
NOTICES
Financial management systems:
Joint Financial Management Improvement Program—
Property management systems requirements; availability and comment request, 17883–17884

Grain Inspection, Packers and Stockyards Administration
RULES
Packers and stockyards regulations:
Feed weight, 17758–17763

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See National Institutes of Health
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 17864–17869

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Single family mortgage insurance—
Appraiser roster; placement and removal procedures, 17974–17978

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Colusa Indian Community Council trust lands, CA, 17893–17896

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Basis adjustments among partnership assets; allocation, 17829–17835
Lifetime charitable lead trusts, 17835–17839
Tax-exempt organizations; taxation of income from corporate sponsorship
Correction, 17829

International Trade Administration
NOTICES
Antidumping:
Stainless steel sheet and strip in coils from—
Japan, 17856–17857
North American Free Trade Agreement (NAFTA); binational panel reviews:
Live cattle from—
Canada, 17857

International Trade Commission
NOTICES
Import investigations:
Andean Trade Preference Act; effect on U.S. economy and Andean drug crop eradication, 17900–17901
Color picture tubes from—
Various countries, 17901
Gray portland cement and clinker from—
Various countries, 17901–17902
Porcelain-on-steel and top-of-the-stove stainless steel cooking ware from—
Various countries, 17902–17903

Land Management Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17896–17897
Coal leases, exploration licenses, etc.:
Colorado, 17897–17898

Public land orders:
Colorado, 17898

Library of Congress
See Copyright Office, Library of Congress

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Earth Systems Science and Applications Advisory Committee, 17903
Advisory Council task forces, 17903

National Archives and Records Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17903–17904

National Highway Traffic Safety Administration
RULES
Fuel economy standards:
Light trucks; 2002 model year, 17776–17778
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Occupant protection in interior impact; head impact protection, 17842–17852

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 17885–17886
National Center for Research Resources, 17886–17887
National Eye Institute, 17887
National Institute of Allergy and Infectious Diseases, 17888
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 17888–17889
National Institute of Child Health and Human Development, 17888
National Institute of General Medical Sciences, 17887–17888
National Institute of Neurological Disorders and Stroke, 17887

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass, 17786–17804
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 17808
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 17807
Pacific Coast groundfish; trip limit adjustments, 17805–17807
West Coast salmon, 17807–17808
International fisheries regulations:
Pacific halibut—
Catch sharing plans; correction, 17805
PROPOSED RULES
Endangered and threatened species:
Sea turtle conservation requirements; technical changes, 17852–17854
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17857–17858

National Park Service
NOTICES
Mining plans of operations; availability, etc.:
Wrangell-St. Elias National Park and Preserve, AK, 17898
Native American human remains and associated funerary objects:
Bernice Pauahi Bishop Museum, Honolulu, HI—
Inventory from Kawaihae, Kohala, Island of Hawaii, 17899–17900
Wooden images, feather cape fragment, wooden funnel, bracelet, etc., from Kawaihae, Kohala, Island of Hawaii, 17898–17899

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17904–17905
Meetings:
Reactor Safeguards Advisory Committee, 17907–17908
Meetings; Sunshine Act, 17908
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 17908–17930
Petitions; Director's decisions:
Power Authority of State of New York, 17930
Applications, hearings, determinations, etc.:
Entergy Nuclear Generation Co., 17905–17906
Washington Public Power Supply System, 17906–17907

Patent and Trademark Office
PROPOSED RULES
Patent cases:
Patent applications, pending; eighteen-month publication; implementation, 17946–17971
NOTICES
Organization, functions, and authority delegations:
Agency reestablishment as United States Patent and Trademark Office and adoption of seal, 17858

Personnel Management Office
RULES
Prevailing rate systems, 17755–17756

Postal Service
RULES
Domestic Mail Manual:
Delivery record filing system; electronic storage and retrieval system implementation, 17766–17768
NOTICES
Government Performance and Results Act:
Five-year strategic plan development, 17930–17932

Presidential Documents
PROCLAMATIONS
Special observances:
Cancer Control Month (Proc. 7284), 17981–17982
Census Day (Proc. 7286), 17985–17986
Child Abuse Prevention Month, National (Proc. 7285), 17983–17984

Public Health Service
See Centers for Disease Control and Prevention
See National Institutes of Health

NOTICES
National Toxicology Program:
Carcinogens Report, Tenth Edition—
Substances, mixtures, and exposure circumstances for listing or delisting, 17889–17893

Research and Special Programs Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17940–17943

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Shares substitution applications—
Fidelity Investments Life Insurance Co. et al., 17932–17934
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 17934–17936

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17900

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Railway Co., 17943

Technology Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17858–17859

Thrift Supervision Office
PROPOSED RULES
Lending and investments:
Responsible alternative mortgage lending, 17811–17818

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Meetings:
Minority Business Resource Center Advisory Committee, 17936

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Meetings:
Debt Management Advisory Committee, 17943

Separate Parts In This Issue

Part II
Department of Commerce, Patent and Trademark Office, 17945–17971

Part III
Department of Housing and Urban Development, 17973–17978

Part IV
The President, 17979–17986

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations

7284.....17981
7285.....17983
7286.....17985

5 CFR

532.....17755

7 CFR

985.....17756

Proposed Rules:

984.....17809

9 CFR

201.....17758

12 CFR

Proposed Rules:

560.....17811

14 CFR

39.....17763

Proposed Rules:

39 (4 documents) 17818, 17822, 17824, 17827

24 CFR

200.....17974

26 CFR

Proposed Rules:

1 (3 documents) 17829, 17835
20.....17835
25.....17835

27 CFR

Proposed Rules:

4.....17839

33 CFR

117.....17766

37 CFR

Proposed Rules:

1.....17946
5.....17946
201.....17840

39 CFR

111.....17766

40 CFR

52 (2 documents) 17768, 17771
180.....17773

Proposed Rules:

52 (2 documents) 17841
141.....17842
142.....17842

47 CFR

73.....17775

49 CFR

533.....17776

Proposed Rules:

571.....17842

50 CFR

17.....17779
226.....17786
300.....17805
600.....17805
660 (3 documents) 17805, 17807
679.....17808

Proposed Rules:

223.....17852

Rules and Regulations

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 2000

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI75

Prevailing Rate Systems; Abolishment of the King, WA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will abolish the King, Washington, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, establish a new Snohomish, WA, NAF FWS wage area, and remove Whatcom County, WA, as an area of application. It is necessary to abolish the King wage area and establish a new Snohomish wage area because the King wage area's host installation, Naval Station Puget Sound, has closed. This closure left the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys. It is necessary to remove Whatcom County because NAF FWS employees no longer work in the county.

DATES: *Effective Date:* This regulation is effective on May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On November 15, 1999, the Office of Personnel Management (OPM) published a proposed rule (64 FR 61793) to abolish the King, Washington, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, establish a new Snohomish, WA, NAF FWS wage area, and remove Whatcom County, WA, as an area of application. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria established in § 532.219(b) of title 5, Code of Federal Regulations.

The King wage area currently has one survey county, King County, and four area of application counties, Island, Snohomish, Whatcom, and Yakima Counties, WA. The closure of the King wage area's host activity, Naval Station Puget Sound, left the Department of Defense (DOD) without an activity in the survey area with the capability to conduct annual local NAF wage surveys. In July 1996, DOD scheduled a full-scale wage survey in the King NAF wage area. The local wage survey committee had to conduct the King survey from Naval Station Everett in Snohomish County. Because the host installation closed and relocated to Snohomish County, we are establishing Snohomish County as a new NAF wage area. Snohomish County meets the regulatory requirements for an NAF survey area. Approximately 103 NAF FWS employees work at Naval Station Everett, and the base has the capability to host annual local wage surveys. Also, Snohomish County has more than the required minimum number of private enterprise employees in establishments within survey specifications.

We are removing Whatcom County from an NAF wage area definition because Blaine Air Force Station has closed, and NAF FWS employees no longer work in the county. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.'' Therefore, we are not defining Whatcom County to an NAF wage area.

The new Snohomish, WA, NAF wage area will have one survey county, Snohomish County, and three area of application counties, Island, King, and Yakima Counties, WA. DOD will order full-scale wage surveys in the Snohomish, WA, NAF wage area in July of even fiscal years, with the first full-scale wage survey for the Snohomish wage area beginning in July 2000. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with these changes. The proposed rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director,

Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix B to subpart B of part 532 is amended for the State of Washington by removing the entry for ''King'' and by adding alphabetically a new entry for ''Snohomish'' with a beginning survey month of ''July'' and a fiscal year of full-scale survey of ''Even''.

3. Appendix D to subpart B is amended by removing the wage area listing for King, Washington, and by adding alphabetically a new entry for Snohomish, Washington, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

WASHINGTON

* * * * *

SNOHOMISH

Survey Area

Washington:
Snohomish

Area of Application. Survey area plus:

Washington:
Island
King

Yakima

[FR Doc. 00–8333 Filed 4–4–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–4 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 1, 2000. Comments received by May 5, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E–mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Committee for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled.

The spearmint oil order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1995–1996 and subsequent marketing years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on February 23, 2000, and unanimously recommended 2000–2001 expenditures of $212,900 and an assessment rate of $0.09 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $219,028. The assessment rate of $0.09 is $0.01 lower than the rate currently in effect. The Committee discussed assessment rates both lower and greater than $0.09 per pound. However, the Committee decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling,

postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

The Committee estimates that spearmint oil sales for the 2000–2001 marketing year will be approximately 2,058,474 pounds, which should provide $185,263 in assessment income. This assessment income, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee estimates that spearmint oil sales will total 2,058,474 pounds in the 2000–2001 marketing year. The $0.09 per pound assessment rate should provide an estimated income of $185,263, which, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year and that the fund will not exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $212,900 which is $6,128 less than approved for last year. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. Alternative expenditure levels and assessment rates were discussed by the Committee officers prior to presentation to the full Committee for approval. The Committee decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

Based on 1999 prices, the average price paid to producers for both Scotch and Native spearmint oils during the 2000–2001 marketing year could be about $9.80 per pound. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could be about 0.92 percent.

This action decreases the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 23, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit

information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The 2000–2001 marketing year begins June 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) this action decreases the assessment rate for assessable spearmint oil beginning with the 2000–2001 marketing year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

Interested persons are invited to comment on this rule. A 30-day comment period is provided. This period is deemed appropriate because the 2000–2001 marketing year begins June 1, 2000.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.141 is revised to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2000, an assessment rate of $0.09 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: March 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8299 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA64

Regulations Issued Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed weight is accurately or reasonably determined and feed weight is properly documented whenever feed weight affects payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

EFFECTIVE DATE: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Caughlin Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Stop 3646, Washington, DC 20250–3646. He can be reached by phone at 202–720–6951.

SUPPLEMENTARY INFORMATION: GIPSA is amending existing scales and weighing regulations to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

Background

On February 12, 1997, GIPSA published an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935–5937) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing. GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be measured and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

On April 2, 1999, GIPSA published a Notice of Proposed Rulemaking (NPRM) (64 FR 15938—15942) proposing to amend existing scales and weighing

regulations under the P&S Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement.

Comments in Response to the NPRM

We received 37 comments in response to the NPRM. Of the comments received, 25 supported the NPRM, 7 opposed, 2 were neutral and 3 commented on issues other than those proposed in the NPRM. Commenters were located in the States of Alabama (1), Arkansas (5), Delaware (2), Georgia (2), Iowa (1), Maryland (1), Minnesota (3), Mississippi (1), Missouri (2), North Carolina (3), Pennsylvania (1), Virginia (3), and West Virginia (1). State location could not be determined for 6 commenters, and 5 commenters were from the District of Columbia. Comments were received from: poultry trade associations (8), producer and grower associations (5), poultry growers (14), poultry integrators (7), feed companies (2), and a state weights and measures department.

Comments Supporting the NPRM

Six growers commented that the proposed regulation changes would help ensure fair dealings between contract growers and integrators. A poultry integrator and a national trade association, which represents the producers/processors of more than 95 percent of the broiler/fryer chickens marketed in the United States, commented that the amendment will help to alleviate concerns that some growers have with respect to weighing feed. Three poultry integrators commented that the proposed feed weighing regulation either was reasonable, has been standard procedure in their firms for many years, or does not differ greatly from their present practices. A State farm association, whose State's poultry production was $730 million in cash receipts, commented it believes the substantive regulation governing feed weighing will improve company accuracy and fairness in determining growers' individual pay within a competitive pay or settlement system as well as the accountability of individual companies and production complexes. The nation's largest general farm association commented that GIPSA's action to strengthen production contract-related feed weighing rules is consistent with GIPSA's mission to facilitate the marketing of grains, livestock, poultry, and meat. A farmers' association, with 300,000 farm and ranch members, commented it believes the proposed rule is a good first step and supports the proposed rule. A national grower association stated that this rule is very important, and the rule should go a long way towards ensuring accurate weighing. A State poultry association and a national poultry association, which represents more than 95 percent of the U.S. turkey industry including all phases of growing and processing, commented that they support the basic concept of amending the regulations to regulate the weighing of feed under the P&S Act. A broiler trade association commented that, in general, it commends GIPSA for the proposed rule.

Comments Generally Opposing the NPRM

Seven comments were filed in opposition to the NPRM. There were two general reasons given for opposing the NPRM. One was that the rule was not needed, and the other was that the rule did not go far enough. A feed company and a national trade association, representing about 1,000 grain, feed, processing, and grain-related firms comprising 5,000 facilities that handle more than two-thirds of all U.S. grains and oilseeds, commented that several provisions are redundant or inconsistent with existing Federal and State regulatory requirements that govern scales used to weigh feed. These comments cited two regulations: 21 CFR 225.30 and 225.130. These two regulations pertain to scales used in the production of a medicated feed of intended potency and purity and do not regulate scales used to weigh feed where the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers.

A State trade association, representing country elevators and feed mills, commented that the NPRM unfairly focuses too much attention on feed weighing and feed delivery as factors affecting feed efficiency contracts and not enough on other factors such as ration density, sanitation and disease. Two growers commented that the proposed feed weighing regulation is inadequate to ensure that feed is accurately weighed or reasonably determined.

Objections or Concerns About Specific Parts of the NPRM

Many commenters, both those in general support of and those in opposition to the rule, raised some objections or concerns about some part of the NPRM. These objections or concerns regarding the NPRM and GIPSA's response to those comments are as follows.

Comment: Seals—Thirteen commenters mentioned the use of seals to seal feed bins or feed compartments. The comments ranged from seeing the use of seals as a small step forward or as a burden. The majority of the comments questioned the need for seals or objected to their use.

Response: The proposed rule does not require each feed bin or feed compartment be sealed. However, if a feed supplier uses seals to help assure the grower receives all of his or her feed, the proposed rule requires a feed supplier to use numbered seals and record the seal numbers on the weigh ticket.

Comment: Pick Up of Excess Feed—Eleven comments were received regarding excess feed that is picked up from a grower and the NPRM's proposal that § 201.55(b) require the weight of excess feed be ''reasonably determined'' using a ''mutually acceptable'' method. The comments ranged from asserting the language will not work, to suggesting that the language be clarified to indicate that alternative systems to weighing picked up excess feed on a scale are acceptable to determine feed weight.

Response: To address the concerns raised in these comments, we have changed the language in § 201.55(b) to read as follows. ''Whenever the weight of feed is a factor in determining payment or settlement to such livestock grower or poultry grower when the livestock or poultry is produced under a livestock or poultry growing arrangement, any feed that is picked up from or returned by a livestock grower or poultry grower must be weighed or its weight must be reasonably determined. When feed is picked up or returned and not weighed, the stockyard owner, market agency, dealer, packer, or live poultry dealer must document that the method used reasonably determines weight and is mutually acceptable to it and the livestock grower or poultry grower. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight.''

Comment: Scale Ticket Printing and Completion—Nine commenters mentioned scale ticket printing and completion. The comments primarily requested clarification on the information needed to adequately identify the feed delivery vehicle and grower/lot identification.

Response: The amendment to § 201.49 requires that scale tickets evidencing the weighing of feed contain the same information that is required on scale tickets completed when weighing live

poultry except that scale tickets do not need to include weather conditions or the number of poultry.

Comment: Printing Tare, Gross and Net Weight—Eight comments were received related to printing tare, gross and net weight. The comments ranged from suggesting that handwritten net weight determined from mechanically printed gross and tare should be acceptable, to suggesting that printing a net weight on bulk weighing systems should be sufficient.

Response: If the net weight is determined by the difference between scale-printed tare and gross weights and the mechanical or electronic printer does not have the capability to print the net weight, the net weight can be handwritten. On bulk weighing systems where only the net weight is determined, the gross and tare weights do not have to be printed.

Comment: Scale Testing and Providing Report of Test to P&S Regional Offices—Five comments were received regarding testing and submission of the test reports to the P&S regional offices. The comments ranged from suggesting that this provision is redundant or inconsistent with existing Federal and State regulatory requirements for scales used to weigh feed to suggesting that scale test reports not be sent to the regional offices.

Response: GIPSA's research did not identify any other Federal agency that has jurisdiction over all scales used to weigh feed where the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers. The rule imposes the same requirements for scales used to weigh feed as for all other scales used by industry members who are subject to the P&S Act, including the requirement that scale test reports be sent to the appropriate P&S regional office.

Comment: Qualified Scale Operator—Three comments were received requesting that ''qualified'' be defined or requesting guidance on what certification or training is required by the rule.

Response: A scale operator is ''qualified'' if the operator is trained to operate scales in a manner that assures the accurate weight of livestock, livestock carcasses, live poultry, or feed. The rule does not require a specific training method to qualify someone to operate scales.

Other Comments to the NPRM

GIPSA received several comments related to feed weighing but not directly related to the rule. These comments and GIPSA's response to the comments follow:

Comment: GIPSA has specific authority to request the reweighing of livestock; however, no amendments were proposed to extend the Agency's authority to cover feed.

Response: Sections 402 and 407 of the P&S Act (7 U.S.C. 222, 228) grant the Secretary the authority to issue regulations as may be necessary to carry out the provisions of the Act. Inaccurately weighed feed may preclude full payment to growers. Therefore, weighing feed inaccurately would constitute an unfair practice under sections 202 and 312 of the Act. 7 U.S.C. 192, 213. Sections 402 and 407 authorize the Secretary to promulgate regulations governing the weighing of feed when feed weight affects payment or settlement to a producer or grower and to prevent violation of the Act. Therefore, no amendment to GIPSA's authority is necessary.

Comment: The rule should provide for compensation to growers (livestock and poultry), plus punitive damages against integrators (live poultry dealers).

Response: Administrative sanctions for violations of the Act by livestock firms are set forth in sections 203(b) (packers) and 312(b) (stockyard owners, market agencies, or dealers) of the P&S Act. 7 U.S.C. 193(b), 213(b). Administrative sanctions for certain violations of the Act by live poultry dealers are set forth in section 411 of the Act. 7 U.S.C. 228b–2. Section 404 sets forth the procedures for prosecuting violations not covered by section 411. 7 U.S.C. 224. Section 308 of the Act sets forth the liability of subject entities to injured persons and the procedures to pursue a private right of action. 7 U.S.C. 209.

Comment: The rule should allow the grower (livestock or poultry) to be present for weighing if the grower so chooses.

Response: The rule does not address this issue. However, livestock growers and poultry growers have the right to be present during the weighing of feed whenever the weight of feed is a factor in determining payment or settlement under a livestock or poultry growing arrangement.

Comment: The rule should allow a grower to require feed trucks to weigh feed at the farm if the grower has a scale.

Response: The rule does not address this issue. We do not have jurisdiction over growers, and we cannot require growers to maintain scales in compliance with regulations promulgated under the P&S Act.

The rule addresses the concerns of livestock growers and poultry growers who produce livestock or poultry under a livestock or poultry growing arrangement. When the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers, the rule requires stockyard owners, market agencies, dealers, packers, or live poultry dealers to weigh feed accurately, to weigh or reasonably determine the weight of excess feed that is picked up from or returned by the livestock grower or poultry grower and to properly account for feed weight. ''Growing arrangement'' with respect to poultry means ''poultry growing arrangements'' as defined in section 2(a)(9) of the Act (7 U.S.C. § 183(a)(9)). ''Growing arrangement'' with respect to livestock means an arrangement in which livestock is produced under contract with a packer. Weight of feed is not considered to be a factor in determining payment to livestock producers in feedlot transactions in which the producer is charged a fee based on feed costs.

All feed scales, including those which are not generally used to sell directly to the general public and are usually not required to be tested by State weights and measures officials, fall under the purview of this rule. In most States, feed scales are not considered commercial devices unless the feed is sold directly to the general public. Therefore, State regulatory oversight of the weighing of feed delivered to livestock growers or poultry growers is not adequate to address the growers' concerns. Extending existing regulations of the P&S Act governing weighing practices and technical requirements for scales to include scales used to weigh feed will result in uniform requirements for weighing feed whenever feed weight affects the payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing agreement. Basic scale requirements and weighing practices, therefore, will assure that payment or settlement is based on accurate weights whenever feed weight affects payment or settlement to livestock growers or poultry growers in livestock and poultry growing arrangements.

This rule amends 9 CFR 201.49, 201.55, 201.71, 201.72, and 201.73 to include requirements regarding the weighing of feed whenever feed weight is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The modifications in these sections make the requirements for feed weighing consistent with the requirements for weighing livestock and live poultry.

Specifically, the rule amends § 201.49 to include paragraph (c) which requires that scale tickets be issued whenever feed weight is a factor in determining payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement. The amendment specifies the information that must be shown on the scale ticket. Section 201.71 is amended to require that scales weighing feed: (1) Be installed, maintained, operated, and tested in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, 1996 edition, entitled ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices''; (2) be equipped with a printing device used for recording weight; (3) be of sufficient length and capacity to weigh an entire load when feed is weighed on a vehicle scale; and (4) be found, upon test and inspection, to be in a condition to provide accurate weight. Section 201.72 is amended to include scales used to weigh feed in the requirement that scales be tested twice during each calendar year at intervals of approximately six months by competent persons and that copies of test reports be furnished to the appropriate P&S Programs' regional office. Section 201.73 is amended to require that stockyard owners, market agencies, dealers, packers and live poultry dealers employ, or insure that their feed suppliers employ, qualified persons to operate scales used to weigh feed and that they require such employees to operate these scales in accordance with the regulations.

Section 201.55 is amended to require that the actual weight of feed be shown on scale tickets or otherwise explained and that picked up or returned feed be weighed or its weight reasonably determined. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight. The language of the amendment to section 201.55(b) has been modified slightly from the language of the proposed rule. The modification clarifies the rule's requirements but does not change the requirements as proposed in the NPRM.

This rule will not impose any significant additional regulatory burden on the affected industries since the feed scales of many subject firms are already routinely tested by State weights and measures organizations or by private scale companies. The additional recordkeeping required under this rule will impose little burden upon subject firms since a majority of the affected entities already utilize adequate weighing and documentation procedures. Subject firms that choose to use seals may incur costs to document the use of numbered seals if they are not currently documenting their use of seals. However, the use of seals is optional, and, according to seal makers contacted by the Agency, numbered seals are less expensive than unnumbered seals. Therefore, at least part of the cost of documentation may be offset by the lower cost of numbered seals.

Civil Rights Statement

Pursuant to Departmental policy, GIPSA has considered the potential civil rights implications of this rule on minorities, women and persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. This rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, color, sex, national origin, religion, age, disability, or marital or familial status.

Executive Order 12866

This rule has been determined to be significant for the purpose of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget. A separate regulatory impact assessment was prepared and is available from Dr. Michael J. Caughlin, Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Washington, DC 20250–3646; (202) 720–695l.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

GIPSA is amending §§ 201.49, 201.55, 201.71, 201.72, and 201.73 of Title 9 of the Code of Federal Regulations to include feed weighing when the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers. The additional information collection is required to provide livestock growers and poultry growers (generally small entities) assurance that feed scales are being tested and maintained properly, that feed is accurately weighed or its weight is reasonably determined, and that they are receiving proper and adequate documentation of the feed weight.

GIPSA has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will affect both parties in growing arrangements in which the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower. In most instances, the livestock grower or poultry grower will be a small entity and is the intended beneficiary of this rule. Because the costs of complying with this rule usually will be borne by the stockyard owner, market agency, dealer, packer or live poultry dealers, the economic impact on growers is expected to be negligible.

The costs of compliance will be borne by any stockyard owner, market agency, dealer, packer or live poultry dealer who is party to a growing arrangement in which the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower. However, the economic impact on these entities is expected to be minimal. Approximately 260 poultry integrators currently supply feed to poultry growers and an estimated 50 additional entities operating subject to the P&S Act currently supply feed to livestock growers where the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers. Most of these 310 firms are considered small entities.

Subject firms will be responsible for ensuring that scales used to determine the weight of feed, whether theirs or their feed provider's, have a printing device and conform to the specifications of NIST Handbook 44 (H–44), 1996 edition. Scale installation companies usually do not install a scale system that would not comply with the requirements of this amendment to the regulations. Currently, most feed scales, including those used by small entities, have a weight-printing device and conform to H–44 requirements. GIPSA did not receive any comments on the NPRM from any subject entity claiming that it currently supplied feed under a growing arrangement and had no weight-printing device. One association for feed companies stated that many of its members do not have a weight-printing device, but it did not state whether any of those members also currently provide feed for a subject entity under a growing arrangement.

GIPSA contacted several scale installation companies and was advised that they would charge less than $10,000 to equip an existing scale with a printing device and any additional equipment needed for the operation of the printing device. The subject entity, including any small entity, could spread this cost over many years because a printing device and any other needed equipment are used for many years. GIPSA anticipates that the cost of equipping an existing scale with a printing device would increase the costs of doing business to live poultry dealers or their feed supplying entities, including small entities, by less than one percent. Therefore, GIPSA does not anticipate any significant economic impact on small entities.

Under this rule, subject firms will be required to test scales twice a year and to submit a copy of each test report to the appropriate P&S regional office. Feed manufacturers, as is customary in most industries dealing in bulk commodities, have their scales tested frequently to ensure accurate weights, prevent system malfunction, and avoid down time. In addition, most entities affected by this rule currently have their scales tested at least twice a year, either by State or local weights and measures officials or by private scale companies. Any of these tests will satisfy the semiannual testing requirement. Those entities currently not conducting two scale tests a year will be required to obtain a second test either from a private scale company or from a State or local weights and measures department.

There will be a minimal recordkeeping burden on all subject entities, including small entities, who weigh or supply feed when the weight of feed is a factor in determining payment or settlement to a livestock or poultry grower who produces livestock or poultry under a growing arrangement. Those entities will be required to submit a copy of scale test reports, on a semiannual basis, to the appropriate P&S regional office. This will entail obtaining a copy of the scale test report, which generally is completed either by the State or local weights and measures department or by the private scale company as a matter of routine documentation, and mailing it to the appropriate P&S regional office. Many State and local weights and measures departments and scale companies already mail the copies of the scale test reports to the appropriate P&S regional office. If any of the subject firms chooses to use seals, the additional paperwork burden will be to note the seal number(s) on the feed ticket that the subject firm is already required to supply to the grower.

Compliance with the requirements for scale tickets is projected to cause minimal burden on the industry. Those entities that do not print a scale ticket for weighed feed or that print scale tickets that do not include all the required information will have to change their procedures to print scale tickets for weighed feed and to include the required information on the scale tickets. However, the additional time to add the required information, such as truck or trailer numbers, grower's name, and whether the truck driver was on or off at the time of weighing, is insignificant.

In addition, subject firms will be required to retain weight records in accordance with the recordkeeping provisions of the Act. In general, this will not entail any retention burden beyond that of normal and customary business practices.

Information Collection and Recordkeeping Requirements

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), GIPSA has submitted a copy of this rulemaking to the Office of Management and Budget (OMB) for its review. GIPSA received no response to its invitation in the NPRM to comment on the increased paperwork burden associated with this regulation. Information and reporting collection burdens imposed by Part 201 have been approved under OMB control number 0580–0015.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

For the reasons set forth in the preamble, GIPSA is amending 9 CFR part 201 to read as follows:

PART 201—[AMENDED]

1. The authority citation for Part 201 is revised to read as follows:

Authority: 7 U.S.C. 222 and 228; 7 CFR 2.22 and 2.81.

2. Section 201.49 is amended by revising the heading and adding paragraph (c) to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed.

* * * * *

(c) *Feed.* (1) Whenever feed is weighed by or on behalf of a stockyard owner, market agency, dealer, packer, or live poultry dealer where the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower, a scale ticket shall be issued which shall show:

(i) The name of the agency performing the weighing service or the name and location of the firm responsible for supplying the feed;

(ii) The name and address of the livestock grower or poultry grower;

(iii) The name or initials or number of the person who weighed the feed, or if required by State law, the signature of the weigher;

(iv) The location of the scale;

(v) The gross weight, tare weight, and net weight of each lot assigned to an individual grower, if applicable;

(vi) The date and time gross weight and tare weight, if gross and tare weights are applicable, are determined;

(vii) The identification of each lot assigned to an individual grower by vehicle or trailer compartment number and seal numbers, if applicable;

(viii) Whether the driver was on or off the truck at the time of weighing, if applicable; and

(ix) The license number or other identification numbers on the truck and trailer, if weighed together, or trailer if only the trailer is weighed, if applicable.

(2) Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be retained by the person subject to the P&S Act, and a second copy shall be furnished to the livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580–0015)

3. Section 201.55 is revised to read as follows:

§ 201.55 Purchases, sales, acquisitions, payments and settlements to be made on actual weights.

(a) Except as provided in paragraph (b) of this section, whenever livestock or live poultry is bought, sold, acquired, paid, or settled on a weight basis, or whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower by a stockyard owner, market agency, dealer, packer, or live poultry dealer when livestock or poultry is produced under a growing arrangement, payment or settlement shall be on the basis of the actual weight of the livestock, live poultry, and/or feed shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued.

Any adjustment to the actual weight shall be fully and accurately explained on the accountings, bills, or statements issued, and records shall be maintained to support such adjustment.

(b) Whenever the weight of feed is a factor in determining payment or settlement to such livestock grower or poultry grower when the livestock or poultry is produced under a livestock or poultry growing arrangement, any feed that is picked up from or returned by a livestock grower or poultry grower must be weighed or its weight must be reasonably determined. When feed is picked up or returned and not weighed, the stockyard owner, market agency, dealer, packer, or live poultry dealer must document that the method used reasonably determines weight and is mutually acceptable to it and the livestock grower or poultry grower. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight.

(Approved by the Office of Management and Budget under control number 0580–0015)

4. Section 201.71 is revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, and all scales used for the purchase, sale, acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

(c) All vehicle scales used to weigh livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to weigh livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and found to be in a condition to give incorrect or inaccurate weights or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations in this section.

5. Section 201.72 is revised to read as follows:

§ 201.72 Scales; testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations in this part at least twice during each calendar year at intervals of approximately 6 months. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the P&S regional office for the region in which the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Administrator if such forms contain substantially the same information.

(Approved by the Office of Management and Budget under control number 0580–0015)

6. Section 201.73 is revised to read as follows:

§ 201.73 Scale operators to be qualified.

Stockyard owners, market agencies, dealers, packers, and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses, or live poultry, and they shall require such employees to operate the scales in accordance with the regulations in this part.

Dated: March 29, 2000.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–8236 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–86–AD; Amendment 39–11656; AD 2000–07–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires deactivation of the map light assemblies; or modification and reidentification of the insulation blankets adjacent to certain map light assemblies, if applicable, a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and follow-on actions. This amendment is prompted by incidents in which a broken or cracked light bulb housing of the First Officer map light was found. The actions specified in this AD are intended to detect a broken light bulb housing, which could expose the power contactor. An exposed power contactor could cause the Captain, First Officer, or Right Observer map light to short or overheat, which could result in smoke or fire in the cockpit.

DATES: Effective April 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD 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 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems Safety and Integration, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

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 an incident in which a broken light bulb housing of the First Officer map light was found on a McDonnell Douglas Model MD–11 series airplane. This breakage exposed the power contactor that goes to the base of the light bulb and allowed the contactor to short circuit to the lamp housing mounting plate. In another incident on the same airplane model, the light bulb housing cracked without exposing the contactor. The cause of the breakage/cracking has not been determined. A broken light bulb housing, if not corrected, could expose the power contactor and cause the Captain, First Officer, or Right Observer map light to short or overheat, which could result in smoke or fire in the cockpit.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 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 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 MD11–33A069, dated March 10, 2000, which describes procedures for accomplishing either of the following actions:

- Deactivation of the map light assemblies by disconnecting, coiling, and stowing power wires to the Captain, First Officer, and Right Observer map light assemblies; or
- Modification and reidentification of the insulation blankets adjacent to the Captain and First Officer map light assemblies (for certain airplanes); a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies; and follow-on actions. The follow-on actions include repetitive inspections, replacement of the map light assembly with a new or serviceable light assembly; or deactivation of damaged map light assemblies; as applicable.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to detect a broken light bulb housing, which could expose the power contactor. An exposed power contactor could result in the Captain, First Officer, or Right Observer map light shorting or overheating, and consequent smoke or fire in the cockpit. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action. The FAA is continuing to investigate the existing design of the map light assemblies of certain configuration crew rest areas. In addition, the manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once final action is identified, or once the modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall 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 Number 2000–NM–86–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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 this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–07–02 McDonnell Douglas: Amendment 39–11656. Docket 2000–NM–86–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000; 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 detect a broken light bulb housing and the resultant exposed power contactor, which could cause the Captain, First Officer, or Right Observer map light to short or overheat, and consequent smoke or fire in the cockpit, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1), or (a)(2) or (a)(3) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000.

Option 1 (Deactivate Map Light Assemblies)

(1) For Groups 1 and 2 airplanes identified in the alert service bulletin: Disconnect, coil, and stow power wires to each Captain, First Officer, and Right Observer map light assembly, until the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable, have been accomplished.

Note 2: Repetitive inspections of the deactivated map light assemblies are not required.

Option 2 (Inspect/Replace/Deactivate Map Light Assemblies)

(2) For Group 1 airplanes identified in the alert service bulletin: Modify and reidentify the insulation blankets adjacent to the Captain and First Officer map light assemblies; and perform a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies.

Note 3: 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.''

(i) Condition 1 (No Damage Found). If no damage is detected, repeat the general visual inspection of the map light assemblies and adjacent insulation blankets thereafter at intervals not to exceed 700 flight hours.

(ii) Condition 2 (Damage Found). If any damage is detected, prior to further flight, accomplish the actions specified in either paragraph (a)(2)(ii)(A) or (a)(2)(ii)(B) of this AD in accordance with the alert service bulletin.

(A) Option 1 (Replace Damaged Map Light Assemblies). Replace the map light assembly with a new or serviceable light assembly. Repeat the general visual inspection of the map light assemblies and adjacent insulation blankets thereafter at intervals not to exceed 700 flight hours.

(B) Option 2 (Deactivate Damaged Map Light Assemblies). Disconnect, coil, and stow power wires to each damaged Captain, First Officer, and Right Observer map light assembly, until the requirements of paragraph (a)(2)(ii)(A) of this AD have been accomplished.

(3) For Group 2 airplanes identified in the alert service bulletin: Perform a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and perform the actions specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, at the time(s) indicated in that paragraph.

Note 4: For Group 2 airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000: Modification and reidentification of the insulation blankets are not required. Prior to delivery of Group 2 airplanes, the insulation blankets were modified.

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 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

(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.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected 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 90712; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 20, 2000.

Issued in Renton, Washington, on March 28, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8133 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–018]

Drawbridge Operation Regulations: West Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District has issued a temporary deviation from the existing drawbridge regulations for the West Bay Bridge, mile 1.2, across West Bay in Osterville, Massachusetts. This deviation requires the bridge owner to open the bridge from April 1, 2000 to April 30, 2000, 8 a.m. to 4 p.m., only if at least a four hour advance notice is given by calling (508) 790–6330. This deviation is necessary to facilitate necessary repairs to the bridge.

DATES: This deviation is effective from April 1, 2000 to April 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The West Bay Bridge has a vertical clearance of 15 feet at mean high water and 17 feet at mean low water.

The existing regulations for the bridge in 33 CFR 117.622 require the bridge to open on signal April 1 through October 31 as follows:

(1) April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 through Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) At all other times from April 1 through October 31, the draw shall open on signal if at least 4 hours advance notice is given.

(6) From November 1 through March 31, the draw shall open on signal if at least 24 hours advance notice is given.

The bridge owner, the Town Of Barnstable, asked the Coast Guard to allow the bridge to open on signal, from April 1, 2000 through April 30, 2000, 8 a.m. to 4 p.m., only if at least 4 hours advance notice is given by calling (508) 790–6330. These repairs are being performed during the month of April when there have been few requests to open the bridge. Mariners may use an alternate route through Cotuit Bay to avoid using the West Bay Bridge if they do not wish to provide the 4 hour advance notice for bridge openings.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation is authorized under 33 CFR 117.35.

Dated: March 28, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District 3.

[FR Doc. 00–8377 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Changes to Current Delivery Record Filing System

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth revised Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement an electronic storage and retrieval system for delivery records. Conforming changes are proposed in portions of the Domestic Mail Manual concerning delivery record information to reflect the new system, in particular the fact that hardcopy records will no longer be retained at the office of address for delivery record inquiry and receipt purposes. Additionally, changes are proposed to the DMM to indicate the change in how information from the delivery record, requested using PS Form 3811–A, Domestic Return Receipt (After Mailing), will be conveyed to customers. A notice of intent on this issue was published in the **Federal Register** on June 10, 1998 (63 FR 31815). Responses to that notice are addressed in this rule.

EFFECTIVE DATES: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Bornitz, (202)–268–6797.

SUPPLEMENTARY INFORMATION:

Scope: A national Postal Service electronic database for maintaining records of delivery date, time, and other information is already in place and is being used for Express Mail and Delivery Confirmation items. Testing of the database included material handling, operations, and systems tests for the capturing, routing, optical scanning, storage, and retrieval of electronic records that include a signature. Testing of this universal strategy for signature capture began in November 1998 and was completed in December 1999. The increased accessibility of an electronic database will improve customer service and response time and speed up processes involving the filing of indemnity claims.

Current Internal Use (Hardcopy Records): Delivery records are maintained for Postal Service use to reply to delivery inquiries and to substantiate indemnity claims (additional internal uses exist as well). Current delivery records include type of special service item, article number, recipient signature, printed name, delivery address, and delivery date. When applicable, the delivery record includes where a mailpiece was forwarded or if an item was returned or refused. Records are also made available to customers in the form of a Return Receipt After Mailing or Duplicate Return Receipt. The Postal Service currently maintains hardcopy delivery records for Express Mail, COD, Certified, Numbered Insured, Registered, Restricted Delivery, International Accountable, and Return Receipt for Merchandise items. Electronic records, without signature information, are maintained for Express Mail and Delivery Confirmation items in a centralized database.

Internal Use Under the New System: The use of delivery record information will not change under this program. Hardcopy delivery records filed up to the implementation of this program will be maintained for the full stated

retention periods. The electronic delivery record program only applies to domestically delivered items; APO and FPO deliveries are not included, nor are the majority of deliveries to territories, possessions, and freely associated states. The electronic delivery record will include the article number, date of delivery, signature of recipient, printed name of recipient, and addressee's delivery address. Information on items that were forwarded or returned to sender will also be maintained as part of the electronic mailpiece record. All electronic delivery records will be maintained in a Postal Service centralized database. PS Form 3811–A, Domestic Return Receipt (After Mailing), will not be used to convey electronic delivery record information to customers for records stored electronically. Instead, customers will receive a dated letter, generated from the centralized database, providing one of the following: (1) The full delivery record, (2) the delivery record absent the signature/name/address information (if that information is not available), (3) a statement that the delivery record could not be found, or (4) a statement that duplicate IDs prohibited final results. These responses, with the exception of response four, are similar to the current responses provided via the PS Form 3811–A. The time to respond to customer inquiries for electronic delivery records will improve significantly.

Current Customer Use: Option 1: When a customer requests a Return Receipt After Mailing (PS Form 3811–A), the Postal Service provides the name and date of delivery only. Option 2: If a Duplicate Return Receipt is requested because the original return receipt was not provided, the Postal Service uses the delivery record to provide the recipient's name, date of delivery, and the addressee's delivery address if different from the address shown on the mailpiece. The customer is also informed if a record of delivery is not found. No actual signatures are provided with either option. All information is provided via the mail in hardcopy format.

Customer Use Under the New System: Service will be improved for Duplicate Return Receipt and Return Receipt After Mailing by the inclusion of an electronically produced image of the customer/recipient's signature, printed name, and address (when available) for items filed electronically. Requesters will receive a Duplicate Return Receipt or Return Receipt After Mailing for electronically filed items via fax or mail. The new form design is a letter which will be automatically generated by the centralized database. Requests for Duplicate Return Receipt and Return Receipt After Mailing must continue to be made at a post office.

On June 10, 1998, the Postal Service published for public comment in the **Federal Register** (63 FR 31815), the proposed rule to convert to a system of electronic record keeping. Seven comments from two individuals were submitted to the Postal Service regarding the **Federal Register** notice. These comments concentrated on the following subject areas: Inclusion of printed name on delivery receipt, multiple uses of PS Form 3849, return receipt procedures, availability of records on web site, record security, and the extension of certain special services to other classes of mail. The comments were considered in developing the final rule.

The notice stated that the capture of the recipient's printed name was optional. This has been changed in accordance with DMM section D042.1.7[b].

The notice stated that the hardcopy record will no longer be maintained. The Uniform Photographic Copies of Business and Public Records as Evidence Act (UPA) and the Federal Business Records Act have made records and copies or reproductions that produce a durable medium for reproducing the original admissible in courts of law. The original may be destroyed in the regular course of business. The new process of record storage meets these requirements, and accordingly, the Postal Service will not longer retain these items for delivery record inquiry purposes.

One comment asked how this system of electronic records will be used for recipients of large amounts of accountable mail and the completion of the return receipt (PS Form 3811). This program does not replace or change the current process for PS Form 3811, Return Receipt.

One comment stated that it would be advantageous to have delivery records available on the USPS Web site. The availability of accessing delivery records via the Internet is limited, at this time, to Express Mail and Delivery Confirmation items only, but may be expanded in the future. No signature images will be shown on the Internet for any items.

One commentor raised a question regarding system security to ensure tamper-proof records and originality. The comment asserted that the original delivery receipt must be maintained and be accessible, and that any duplicate return receipts must be validated as they presently are with both the postmark of the completing office and the initials of the postal employee. This electronic system of delivery records is designed to replace, rather than supplement, the current hardcopy filing system for the purpose of customer inquiries. The USPS database that houses delivery records is secure against outside access. Additionally, records are encrypted as they travel to and from the database to ensure record integrity. Delivery record responses will not carry a postmark or any employee designation but will be dated and clearly marked as Postal Service correspondence.

An additional comment was made on the extension of the Signature Confirmation and Delivery Confirmation services to other classes of mail besides Priority Mail and Standard Mail. The electronic record management program does not address the issue of service offerings among classes of mail.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual to read as follows:

R Rates and Fees

R 900 Services

* * * * *

19.0 Return Receipt

Fee, in addition to postage and other fees, per mailpiece:

Requested at time of mailing (showing to whom delivered, signature, date of delivery, and addressee's address, if different) Requested after mailing (showing to whom delivered, signature, date of delivery, and delivery address, if available)

S Special Services

* * * * *

S900 Special Postal Services

S910 Security and Accountability

S911 Registered Mail

1.0 Basic Information

1.1 Description

Registered mail is the most secure service that the USPS offers. It incorporates a system of receipts to monitor the movement of the mail from the point of acceptance to delivery. Registered mail service provides the sender with a mailing receipt, and a delivery record is maintained by the Postal Service.

* * * * *

S912 Certified Mail

1.0 Basic Information

1.1 Description

Certified mail service provides the sender with a mailing receipt, and a delivery record is maintained by the Postal Service. No record is kept at the office from which certified mail is mailed. No insurance coverage is provided. Certified mail is dispatched and handled in transit as ordinary mail.

* * * * *

S913 Insured Mail

1.0 Basic Information

1.1 Description

Retail insured mail provides up to $5,000 indemnity coverage for a lost, rifled, or damaged article, subject to the standards for the service and payment of the applicable fee. A bulk insurance discount is available for insured articles entered by authorized mailers who meet the criteria in 3.0. No record of insured mail is kept at the office of mailing. Insured mail service provides the sender with a mailing receipt. For mail insured for more than $50, a delivery record is maintained by the Postal Service. Insured mail is dispatched and handled in transit as ordinary mail.

* * * * *

S915—Return Receipt

1.0 Basic Information

1.1 Description

Return receipt service provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery). A return receipt may be requested before or after mailing. A return receipt requested before mailing also supplies the recipient's actual delivery address, if the delivery address is different from the address used by the sender.

* * * * *

2.0 OBTAINING SERVICE

* * * * *

2.2 After Mailing

The mailer may request a return receipt after mailing by completing Form 3811–A and paying the appropriate fee. The acceptance office will initiate the inquiry or send the form to the delivery post office for completion. When a delivery record is available, the USPS provides the mailer information from that record, including to whom the mail was delivered and the date of delivery. A request for a return receipt after mailing for Express Mail must be requested within 90 days after the date of mailing, and all other requests are limited to 2 years.

* * * * *

4.0 REQUESTS FOR DELIVERY INFORMATION

4.1 Receipt Not Received

After a reasonable period, not longer than 2 years after the date of mailing, a mailer who did not receive return receipt service for which the mailer had paid may request information from the delivery record, using Form 3811–A. Any request for such information for Express Mail must be filed within 90 days after the date of mailing.

4.2 Form 3811–A

The mailer may request information from the delivery record at any post office by completing Form 3811–A. The applicable fee is waived if the mailer can produce a mailing receipt showing the applicable return receipt fee was paid.

* * * * *

S917 Return Receipt for Merchandise

1.0 Basic Information

1.1 Description

Return receipt for merchandise service is a form of return receipt service that provides the sender with a mailing receipt and a return receipt. A delivery record is maintained by the Postal Service, but no record is kept at the office of mailing. A return receipt for merchandise also supplies the recipient's actual delivery address if it is different from the address used by the sender. Mail using this service is dispatched and handled in transit as ordinary mail. This service does not include insurance coverage. A return receipt for merchandise may not be requested after mailing, and restricted delivery service is not available.

* * * * *

S921 Collect on Delivery (COD) Mail

1.0 Basic Information

1.1 Description

Any mailer may use collect on delivery (COD) service to mail an article for which the mailer has not been paid and have its price and the cost of the postage collected from the recipient. If the recipient remits the amount due by check payable to the mailer, the USPS forwards the check to the mailer. If the recipient pays in cash, the USPS sends a postal money order to the mailer. The amount collected from the recipient may not exceed $600. COD service provides the mailer with a mailing receipt, and a delivery record is maintained by the Postal Service.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–8282 Filed 4–4–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–157–0222; FRL–6569–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: Sacramento Metropolitan Air Quality Management District, San Diego County, San Joaquin Valley Unified, and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rule rescissions from the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and amendments to Ventura County Air Pollution Control District (VCAPCD). This approval action will rescind and amend these rules from the federally approved SIP. The intended effect of approving these rule rescissions and amendments is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990

(CAA or the Act). The rule rescissions consist of obsolete rules that have been superseded or removed from the district's regulations. EPA is finalizing the approval of these revisions to the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIP requirements for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on June 5, 2000 without further notice, unless EPA receives adverse comments by May 5, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule revisions to the California SIP are listed below.

Sacramento Metropolitan Air Quality Management District (SMAQMD)

Rule 445, Perchloroethylene Dry Cleaning, submitted 05/18/98; rescission adopted 10/03/96.

San Diego County Air Pollution Control District (SDCAPCD)

Rule 67.8, Dry Cleaning Facilities Using Halogenated Organic Solvent, submitted 07/23/99, rescission adopted 11/04/98.

San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

Rule 4671, Perchloroethylene Dry Cleaning System, submitted 10/13/95, rescission adopted 06/15/95.

Ventura County Air Pollution Control District (VCAPCD)

Rule 74.5.2, Dry Cleaning Facilities Using Halogenated Organic Solvents, submitted 08/10/95 revision adopted 05/09/95.

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 Act or pre-amended Act), that included the SMAQMD, SDCAPCD, SJVUAPCD, and VCAPCD. 43 FR 8964, 40 CFR 81.305. In response to section 110 (a) of the Act and other requirements, SMAQMD, SDCAPCD, SJVUAPCD, and VCAPCD submitted many rules which EPA approved into the SIP.

On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of volatile organic compound. This compound was determined to have negligible photochemical reactivity and, thus, was added to the Agency's list of Exempt Compounds.

The State of California submitted the rule revisions listed above to update the federally enforceable SIP for the SMAQMD, SDCAPCD, SJVUAPCD, and VCAPCD, and to be consistent with EPA's 1996 rulemaking. The following is EPA's evaluation and final action for each rule.

III. EPA Evaluation and Action

In determining whether to approve each revision to the SIP, EPA must evaluate the revisions for consistency with the requirements of 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 this action, appears in various EPA policy guidance documents.

The rules that are being rescinded are not appropriate for the SIP because they do not control criteria pollutants. EPA regulates perchloroethylene as a hazardous air pollutant under section 112 of the Act.

EPA has evaluated the rule revisons and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, all of the rule revisions listed in section I, Applicability are being approved under section 110(k) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment 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 revision should adverse comments be filed. This rule will be effective June 5, 2000 without further notice unless the Agency receives adverse comments by May 5, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** 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. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on June 5, 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 (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

C. 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 affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled 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 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.

E. Regulatory Flexibility Act

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

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

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

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

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(183)(i)(A)(*8*), (c)(184)(i)(A)(*3*), (c)(185)(i)(C)(*7*), and (c)(224)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*8*) Previously approved on March 24, 1992 and now deleted without replacement Rule 67.8.

* * * * *

(184) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on August 20, 1991 and now deleted without replacement Rule 445.

* * * * *

(185) * * *

(i) * * *

(C) * * *

(*7*) Previously approved on April 24, 1992 and now deleted without replacement Rule 467.1.

* * * * *

(224) * * *

(i) * * *

(B) * * *

(*3*) Rule 74.5.2, adopted on May 5, 1995.

* * * * *

[FR Doc. 00–8149 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 236–0225a; FRL–6569–5]

Revision to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesive and sealants. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 5, 2000 without further notice, unless EPA receives adverse comments by May 5, 2000. If we receive such comment, we will withdraw the document and notify the public in the **Federal Register** that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, 26 Castilian Dr. Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What Rule Did the State Submit?
B. Are there other versions of this rule?
C. What is the purpose of the submitted rule?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. Public comment and final action.
III. Background Information
Why was this rule submitted?
IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State submit?

Table 1 lists the rule we are approving with the date that it was adopted by local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SBCAPCD	353	Adhesives and sealants	08/19/99	10/29/99

On December 16, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other versions of This Rule?

There are no previous versions of Rule 353 in the SIP and no earlier versions of this rule were adopted by the SBCAPCD.

C. What Is the Purpose of the Submitted Rule?

Rule 353 limits VOC emissions from the application of adhesive and sealants. The TSD has more information about this rule and its provisions.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SBCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 353 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The State of California Air Resources Board's ''Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Adhesives and Sealants,'' December 1998.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule 353 contains one deviation from RACT which was determined to meet EPA's 5% equivalency policy (see the Blue Book). The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by May 5, 2000, we will notify the public in the **Federal Register** that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 5, 2000. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 June 5, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(270)(i)(D)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(270) * * *

(i) * * *

(D) Santa Barbara County Air Pollution Control District.

(*1*) Rule 353, adopted on August 19, 1999.

* * * * *

[FR Doc. 00–8147 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300960A; FRL–6551–9]

RIN 2070–AB78

Spinosad; Pesticide Tolerance Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of January 12, 2000, establishing tolerances for spinosad. This document is being issued to correct tolerances for ''animal feed, nongrass, group'' at 0.02 ppm, ''apple'' at 0.2 ppm, ''barley, grain'' at 0.02 ppm, and ''teosinte, grain'' at 0.02 ppm.

DATES: This document is effective April 5, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under '' FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300960A. The official record consists of the documents specifically referenced in this action, any public

comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. What Does this Technical Correction Do?

A final rule to establish tolerances for spinosad on various commodities was published in the **Federal Register** of January 12, 2000 (65 FR 1802) (FRL–6399–7). This correction is being published to establish tolerances for ''animal feed, nongrass, group'' at 0.02 ppm, ''apple'' at 0.2 ppm, ''barley, grain'' at 0.02 ppm, and ''teosinte, grain'' at 0.02 ppm which were incorrectly listed in the table in § 180.495(a).

IV. Why Is this Technical Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, the correction contained in this action will simply correct § 180.495(a) by revising the listing and residue tolerances for commodities that were incorrectly stated. EPA therefore finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553) to make this amendment without prior notice and comment. For the same reasons, EPA also finds that there is ''good cause'' under FFDCA section 408(b)(2) to make this minor modification to the establishment of a tolerance without notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule implements technical corrections to the Code of Federal Regulations (CFR), and does not impose any new requirements.

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that a technical correction is not a ''significant regulatory action'' subject to review by OMB.

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit IV.), this action is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in Unit VIII. of the final rule (65 FR 1802, January 12, 2000).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA) (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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 5, 2000. 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

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

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

2. Section 180.495, is amended by revising the entries for ''Animal feed, nongrass, group,'' ''Apple,'' and ''Teosinte, grain'' and removing the entry for ''Barley'' and adding in its place ''Barley, grain'' to the table in paragraph (a) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Animal feed, nongrass, group	0.02	None
* *	* *	*
Apple	0.2	None
* *	* *	*
Barley, grain	0.02	None
* *	* *	*
Teosinte, grain ..	0.02	None
* *	* *	*

* * * * *

[FR Doc. 00–8265 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–596; MM Docket No. 99–96, RM–9534; MM Docket No. 99–193, RM–9561; MM Docket No. 99–194, RM–9562; MM Docket No. 99–308, RM–9693; MM Docket No. 99–309, RM–9694; MM Docket No. 99–310, RM–9742]

Radio Broadcasting Services; Newell, SD; Moville, IA, Rockford, IA; Watseka, IL; Keosauqua, IA; Box Elder, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants six proposals that allot new channels to Newell, South Dakota; Moville, Iowa; Rockford, Iowa; Watseka, Illinois; Keosauqua, Iowa; and Box Elder, South Dakota. Filing windows for Channel 279C2 at Newell, South Dakota; Channel 246A at Moville, Iowa, Channel 225A at Rockford, Iowa; Channel 240A at Watseka, Illinois; Channel 271C3 at Keosauqua, Iowa; and Channel 274A at Box Elder, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–96; MM Docket No. 99–193; MM Docket No. 99–194; MM Docket No. 99–308; MM Docket No. 99–309; MM Docket No. 99–310, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission, at the request of Mountain West Broadcasting, allots Channel 279C2 at Newell, South Dakota, as the community's first local aural transmission service. *See* 64 FR 15713, April 1, 1999. Channel 279C2 can be allotted at Newell in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) north to avoid a short-spacing to the licensed site of Station KIQK(FM), Channel 281C1, Rapid City, South Dakota. The coordinates for Channel 279C2 at Newell are 44–43–58 North Latitude and 103–25–18 West Longitude.

The Commission, at the request of Mountain West Broadcasting, allots Channel 246A at Moville, Iowa, as the community's first local aural transmission service. *See* 64 FR 29978, June 4, 1999. Channel 246A can be allotted to Moville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) east to avoid a short-spacing to the licensed site of Station KMXC(FM), Channel 247C1, Sioux Falls, Iowa. The coordinates for Channel 246A at Moville are 42–29–11 North Latitude and 96–00–36 West Longitude.

The Commission, at the request of Mountain West Broadcasting, allots Channel 225A at Rockford, Iowa, as the community's first local aural transmission service. *See* 64 FR 29978, June 4, 1999. Channel 225A can be allotted at Rockford in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) southwest to avoid short-spacings to the licensed sites of Station KATF(FM), Channel 225C1, Dubuque, Iowa, and Station KFSI(FM), Channel 225A, Rochester, Minnesota. The coordinates for Channel 225A at Rockford are 43–01–55 North Latitude and 92–57–53 West Longitude.

The Commission, at the request of Iroquois County Broadcasting Company, allots Channel 240A at Watseka, Illinois, as the community's second local FM transmission service. *See* 64 FR 57838, October 27, 1999. Channel 240A can be allotted at Watseka in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.3 miles) northwest to avoid a short-spacing to the licensed site of Station WKKD–FM, Channel 240A, Aurora, Illinois. The coordinates for Channel 240A at Watseka are 40–48–00 North Latitude 87–47–15 West Longitude.

The Commission, at the request of McTronix, allots Channel 271C3 at Keosauqua, Iowa, as the community's first local aural transmission service. *See* 64 FR 57838, October 27, 1999. Channel 271C3 can be allotted at Keosauqua in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 271C3 at Keosauqua are 40–43–48 North Latitude and 91–57–48 West Longitude.

The Commission, at the request of La Nina Education Association, allots Channel 274A at Box Elder, South Dakota, as the community's first local aural transmission service. *See* 64 FR 57837, October 27, 1999. Channel 274A can be allotted at Box Elder in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 274A at Box Elder are 44–06–48 North Latitude and 103–04–12 West Longitude.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended with respect to the communities listed below, as follows:

a. By adding Newell, Channel 279C2; and

b. By adding Box Elder, Channel 274A.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended with respect to the communities listed below, as follows:

a. By adding Moville, Channel 246A;

b. By adding Rockford, Channel 225A; and

c. By adding Keosauqua, Channel 271C3.

4. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 240A at Watseka.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–8343 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

49 CFR Part 533

[Docket No. NHTSA–00–7033]

RIN 2127–AH95

Light Truck Average Fuel Economy Standard, Model Year 2002

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 2002. The issuance of the standard is required by statute. As required by section 321 of the fiscal year (FY) 2000 DOT Appropriations Act, the light truck standard for MY 2002 is identical to the standard for MY 2001, 20.7 mpg.

DATES: This final rule becomes effective on June 5, 2000.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Henrietta Spinner, Office of Consumer Programs, at (202) 366–0846, facsimile (202) 366–2738, electronic mail ''hspinner@nhtsa.dot.gov'' For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Title V has been amended and recodified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that ''[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, we shall consider four criteria: Technological feasibility, economic practicability, The effect of other motor vehicle standards of the Government on fuel economy, and The need of the United States to conserve energy. Using this authority, we have set light truck CAFE standards through MY 2001. See 49 CFR 533.5(a). The standard for MY 2001 is 20.7 mpg.

We began the process of establishing light truck CAFE standards for model years after MY 1997 by publishing an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**. 59 FR 16324 (April 6, 1994). The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM) limited to MY 1998, which proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). This 20.7 mpg standard was adopted by a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for the 1999 model year. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards other than the standard set for the 1998 model year. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

We followed that same procedure for following years and did not issue an NPRM prior to establishing the 2000, and 2001 light truck fuel economy standards. The agency concluded, as it had when setting the 1999 standard, that the restrictions contained in the appropriations acts prevented us from issuing any standards other than the standard set for the prior model year. We also determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

On October 9, 1999, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2000 was enacted. Public Law 106–69. This law contained the appropriations provisions for the Department of Transportation for the 2000 fiscal year. Section 321 of that Act provides:

None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act prescribing corporate average fuel economy standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for us to set the MY 2002 standard is approximately April 1, 2000. As the agency cannot spend any funds in violation of the terms of Section 321, it cannot undertake any work in preparation of a standard for MY 2002 unless it is identical to the MY 2001 standard. Preparation of any fuel economy standard requires the agency to spend money to determine what the appropriate fuel economy level would be, to analyze the costs and benefits of that standard and to prepare documents and studies regarding the standard. Incurring these costs when the legislation dictates the fuel economy level would not be a productive use of resources. Accordingly, the agency is foregoing any analysis of what the appropriate fuel economy level for MY 2002 might be.

We note that the language contained in Section 321 of the FY 2000 Act is identical to that found in Section 330 of the FY 1996 Appropriations Act, Section 323 of the FY 1997 Appropriations Act, Section 322 of the FY 1998 Appropriations Act, and Section 322 of the FY 1999 Appropriations Act. The adoption of identical language in these acts leads us to conclude that Congress considered our prior view of this language to be correct: the limitation precludes NHTSA from setting a light truck standard that differs from one adopted in the previous year.

As explained above, Section 321 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MYs 1998, 1999 and 2000 and 2001. We are therefore establishing the MY 2002 light truck standard through the issuance of this final rule. In our view, the express directive in the FY 2000 Department of Transportation and Related Agencies Appropriations Act stops us from considering a new CAFE standard for the 2002 model year. As we cannot expend any funds to set the 2002 standard at any level other than the MY 2001 standard, issuing a notice of proposed rulemaking and providing an opportunity for notice and comment would be unnecessary and contrary to the public interest. Accordingly, this final rule sets the MY 2002 light truck CAFE standard at the MY 2001 level of 20.7 mpg.

II. Final Rule

These regulations are being published as a final rule. Accordingly, the fuel economy standards in Part 533 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

These regulations have been published as a final rule without prior issuance of a notice of proposed rulemaking because Section 321 of the FY2000 Department of Transportation and Related Agencies Appropriations Act prevents us from issuing any fuel economy standard for the 2002 model year that differs from those in effect for the 2001 model year. Because of this, providing for prior notice and opportunity for comment would have been superfluous.

In the agency's view, vehicle manufacturers and other parties will not be harmed by the agency's decision not to issue an NPRM before issuing a final rule to establish the MY 2002 light truck fuel economy standard. The applicable fuel economy standards established in this final rule do not differ from those established for the prior model year. As these standards cannot be modified by the agency, use of a final rule without a prior NPRM has no impact on the positions of any interested party.

III. Impact Analyses

A. Economic Impacts

We have not prepared a final economic assessment because of the restrictions imposed by Section 321 of the FY 2000 DOT Appropriations Act. All past fuel economy rules, however, have had economic impacts in excess of $100 million per year. The rule was reviewed by the Office of Management and Budget under Executive Order 12866 and is considered significant under the Department's regulatory procedures. Although we have no discretion under the statute (as well as with respect to the costs it imposes), we are treating this rule as ''economically significant'' under Executive Order 12866 and ''major'' under 5 U.S.C. 801.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this action under the National Environmental Policy Act. There is no requirement for such an evaluation where Congress has eliminated the agency's discretion by precluding any action other than the one announced in this document.

C. Impacts on Small Entities

We have not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. The agency notes that this final rule, which was not preceded by a Notice of Proposed Rulemaking, is not a ''rule'' as defined by the Regulatory Flexibility Act and is, therefore, not subject to its provisions. As Congress has eliminated the agency's discretion by precluding any action other than the one taken in this document, we would not be able to take any action in the event such an analysis supported setting the light truck fuel economy at a different level. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a ''small business'' under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132, and have determined that this final rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The agency notes that Section 321 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act precludes the agency from the expenditure of any funds to prepare, propose or promulgate any fuel economy standard that differs from those currently in effect. This directive forbids NHTSA from studying any alternative fuel economy standards other than those presently in force. The agency cannot consider any other alternative standards that may result in lower costs, lesser burdens, or more cost-effectiveness for state, local or tribal governments or the private sector. Furthermore, as we are precluded from expending any funds to prepare an alternative fuel economy standard, it cannot embark on any studies of such alternatives. We have therefore not prepared a written assessment of this final rule for the purposes of the Unfunded Mandates Act.

F. Paperwork Reduction Act

There are no information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. Executive Order 13045

Executive Order 13045 (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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting fuel economy standards for light trucks.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [1] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

In establishing this fuel economy standard, the agency is simply establishing a goal for manufacturers to meet. Therefore, setting this standard does not involve the use of any voluntary standards.

K. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this final rule to the Department of Energy for review. That Department did not make any comments that we have not responded to.

V. Conclusion

Based on the foregoing, we are establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2002 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7

Issued on March 30, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–8249 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–59–P

[1] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE84

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Idaho Ground Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) to be a threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. This subspecies is known from 36 sites in Adams and Valley counties, Idaho. It is primarily threatened by habitat loss due to forest encroachment into former suitable meadow habitats. Forest encroachment results in habitat fragmentation, eliminates dispersal corridors, and restricts the northern Idaho ground squirrel population into small isolated habitat areas. The subspecies is also threatened by competition from the larger Columbian ground squirrel (*Spermophilus columbianus*), land use changes, recreational shooting, poisoning, and naturally occurring events. This rule extends Federal protection provisions provided by the Act for the northern Idaho ground squirrel.

EFFECTIVE DATE: This final rule is effective May 5, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

The northern Idaho ground squirrel has the most restricted geographical range of any *Spermophilus* taxa, and one of the smallest ranges among North American mainland mammals (Gill and Yensen 1992). The first specimens, collected by L.E. Wyman in 1913, were described by A.H. Howell as *Citellus townsendii brunneus,* a subspecies of the Washington ground squirrel (*Spermophilus washingtoni*) (Howell 1938). In 1938, Howell subsequently classified the Idaho ground squirrel as a full species, *Citellus brunneus.* Hershkovitz (1949) demonstrated that *Spermophilus* is the correct name for this genus. Nadler (1966) first presented chromosome descriptions and confirmed the systematics of *Spermophilus.* Yensen (1991) described the southern Idaho ground squirrel (*Spermophilus brunneus endemicus*) as taxonomically distinct, based on morphology, pelage (fur), and apparent life-history differences including biogeographical evidence of separation.

Both the northern and southern Idaho ground squirrels are found only in western Idaho. Of the two subspecies, the northern Idaho ground squirrel is the rarest (Yensen 1991). A relatively small member of the genus *Spermophilus,* the mean length of northern Idaho ground squirrel males and females is 235 millimeters (mm) (9.25 inches (in.)) and 226 mm (8.9 in.), respectively. In comparison, the mean length of southern Idaho ground squirrel males is 241 mm (9.5 in.) and 235 mm (9.25 in.) for females (Yensen 1991). Pelage in northern Idaho ground squirrel differs from the southern Idaho ground squirrel in its mid-dorsal area, which consists of long, dark guard hairs and shorter, dark guard hairs with one paler-colored band on the shield (Yensen 1991). Most northern Idaho ground squirrels are found in areas with shallow reddish parent soils of basaltic origin, while the southern Idaho ground squirrel lives on lower elevation, paler colored soils formed by granitic sands and clays from the Boise Mountains (Yensen 1985, 1991). Marked differences in pelage coloration between the disjunct subspecies are related to soil color.

The baculum (penis bone) of northern Idaho ground squirrel is also generally smaller than the southern Idaho ground squirrel. A principal component analysis, which is a statistical analysis that proves similarities or differences, indicated a striking difference among bacula of the two subspecies (Yensen 1991). Genetic differentiation between the two subspecies was also confirmed using enzyme restriction analysis, blood allozyme analyses, and DNA protein sequencing, all of which analyze blood constituents to determine genetic differences (Gill and Yensen 1992; Sherman and Yensen 1994).

The northern Idaho ground squirrel emerges in late March or early April, remains active above ground until late July or early August (Yensen 1991), and spends the rest of the year in hibernation underground (Eric Yensen, Albertson College, pers. comm. 1999). Populations occur at elevations ranging from 1,155 to 1,580 meters (m) (3,800 to 5,200 feet (ft)) in Adams and Valley counties of western Idaho. In contrast, the southern Idaho ground squirrel occurs at elevations ranging from 669 to 973 m (2,200 to 3,200 ft) in the low rolling hills and valleys along the Payette River in Gem, Payette, and Washington counties of western Idaho (Yensen 1991). The southern subspecies emerges in late January or early February where snow melt begins 1 to 2 months earlier in spring, and ceases above-ground activity in late June or early July. The emergence of the northern Idaho ground squirrel in late March or early April begins with adult males, followed by adult females, then young of the year.

The northern Idaho ground squirrel normally becomes reproductively active within the first 2 weeks of emergence (Yensen 1991). Females that survive the first winter live, on average, nearly twice as long as males (3.2 years for females and 1.7 years for males). Individual females have lived for 8 years (Yensen 1991). Males normally die at a younger age due to behavior associated with reproductive activity. During the mating period, males move considerable distances in search of receptive females for mating and often fight with other males for copulations, thereby exposing themselves to predation by raptors including prairie falcon (*Falco mexicanus*), goshawk (*Accipiter gentilis*), and red-tailed hawk (*Buteo jamaicensis*). Significantly more males die or disappear during the 2-week mating period than during the rest of the 12- to 14-week period of above-ground activity (Sherman and Yensen 1994). Seasonal torpor (a state of sluggishness or inactivity) generally occurs in early to mid-July for males and females, and late July to early August for juveniles.

Unlike many ground squirrel species, the northern Idaho ground squirrel is not truly colonial. In this final rule, local areas where this subspecies occurs are referred to as ''sites.'' In 1985, the estimated population of northern Idaho ground squirrels at 18 known sites was approximately 5,000 squirrels (John Woflin, Service, *in litt.* 1985). Subsequent surveys were conducted on a sporadic basis from 1986 through 1993; more intensive efforts to estimate populations at 10 sites began in 1994 (Sherman and Yensen 1994). While new population sites were found during these surveys, several previously active sites became extirpated (Paul Sherman, Cornell University, pers. comm., 1997). In 1996, the total population had

declined to fewer than 1,000 individuals found at 19 sites (Sherman and Gavin 1997). Only 1 of these sites contained more than 60 animals. In 1997 and 1998, additional locations with northern Idaho ground squirrels were found for a total of 36 historic and currently active sites. However the total population estimate still remains less than 1,000 individuals. Of the 36 sites, 14 occur on public lands (Federal and State). At 3 of these 14 sites, the subspecies has been extirpated, and at 1 site, the subspecies was extirpated but has been reintroduced. There are 22 sites on private lands, but at 7 of the sites, the subspecies has been extirpated. The number of squirrels in many of the active sites has been decreasing for over 10 years (Yensen 1980, 1985; J. Woflin, *in litt.* 1985; Sherman and Yensen 1994; Gavin *et al.* 1998).

Soil texture and depth can be a primary factor in determining species distribution for most *Spermophilus* (Brown and Harney 1993). The northern Idaho ground squirrel often digs burrows under logs, rocks, or other objects (Sherman and Yensen 1994). Dry vegetation sites with shallow soil horizons of less than 50 centimeters (19.6 in.) depth above basalt bedrock to develop burrow systems are preferred (Yensen *et al.* 1991). Burrows associated with shallow soils are called auxiliary burrows. Nesting burrows are found in well-drained soils greater than 1 m (3 ft) deep, in areas not covered with trees or used by Columbian ground squirrels (*Spermophilus columbianus*). Although Columbian ground squirrels overlap in distribution with the northern Idaho ground squirrel (Dyni and Yensen 1996), Columbian ground squirrels prefer moister areas with deeper soils. Sherman and Yensen (1994) report that the lack of extensive use of the same areas by the two subspecies is likely due to competition, rather than to each subspecies having different habitat requirements.

Nearly all of the meadow habitats utilized by northern Idaho ground squirrels are bordered by coniferous forests of *Pinus ponderosa* (ponderosa pine) and/or *Pseudotsuga menziesii* (Douglas-fir). However, this ground squirrel is not abundant in meadows that are surrounded by high densities of small young trees (Sherman and Yensen 1994).

The northern Idaho ground squirrel is granivorous (eats small seeds and grain) seasonally, similar to the Columbian ground squirrel (Dyni and Yensen 1996), and ingests large amounts of *Poa* species (bluegrass) and other grass seeds to store energy for the winter. The northern Idaho ground squirrel will consume the roots, bulbs, leaf stems, and flower heads of another 45 to 50 plant species that are major components of the diet during key periods of the spring and summer. The Columbian ground squirrel often inhabits areas with denser vegetation than the northern Idaho ground squirrel (Dyni and Yensen 1996). Such areas contain more abundant food resources than habitats occupied by northern Idaho ground squirrel (Belovsky and Schmitz 1994). The northern Idaho ground squirrel is found on lands administered by the U.S. Forest Service (Forest Service), Idaho State Department of Lands, and private property.

Previous Federal Action

In a status review published January 6, 1989, we determined that the northern Idaho ground squirrel was a category 1 candidate (56 FR 562). Category 1 candidates were those taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using category designations and included the northern Idaho ground squirrel as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for this animal was continued in the September 19, 1997, Notice of Review (62 FR 49398).

As a result of long-standing litigation with the Fund for Animals, a lawsuit settlement of January 21, 1997, directed us to make a decision (*i.e.,* prepare a proposed rule to list or remove from Federal candidacy) concerning the northern Idaho ground squirrel on or before April 1, 1998. A proposed rule to list the subspecies as threatened was published on March 23, 1998 (63 FR 13825).

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. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the proposed rule (63 FR 13825), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule for the northern Idaho ground squirrel. We contacted appropriate State agencies, county governments, Federal agencies, scientists, landowners, and other interested parties and requested them to comment. We opened a public comment period of 60 days on March 23, 1998, and closed it on May 22, 1998 (63 FR 13825). On March 13, 1998, we sent legal notices that invited public comment and announced a public hearing. The notice was published in The Idaho Statesman, Council Record, Adams County Leader, and the Central Idaho Star News on March 28, 1998. In anticipation of public interest, we conducted a public hearing on May 5, 1998, in Council, Idaho at the Council Elementary School. To consider new scientific information, we reopened the public comment period for 30 days on October 21, 1998 (63 FR 56134). A legal notice concerning the public comment period was published on October 27, 1998, in The Idaho Statesman. This comment period closed on November 20, 1998.

During the 3-month comment period, we received a total of seven comments. Of these comments, one supported listing, and two opposed the listing. Four comments were noncommittal. We reviewed all of the comments (*i.e.,* written and oral testimony) referenced above. The comments were grouped and are discussed under the following issue headings. In addition, we considered and incorporated, as appropriate, into the final rule, all biological and commercial information obtained through the public comment period.

Peer Review

In compliance with our July 1, 1994, Peer Review Policy (59 FR 34270), we solicited the expert opinion of an independent scientist regarding pertinent scientific or commercial data and issues relating to the supportive biological and ecological information for the northern Idaho ground squirrel. Information and suggestions provided by the reviewer were considered in

developing this final rule, and incorporated where applicable.

Issue 1: One commenter believed there was a general lack of adequate information about the squirrels or sufficient searches for additional sites to publish a final rule. This responder was also concerned that key Forest Service staff and the primary research personnel involved in studying the northern Idaho ground squirrel intend to leave the project.

Our Response: We, the Forest Service, and the Idaho Department of Fish and Game have provided equipment, funding, and staff to support surveys for new populations and monitoring of existing populations since 1994. In 1998, additional surveys for the northern Idaho ground squirrel were conducted on lands owned by Boise Cascade Corporation (John Haufler, Boise Cascade Corporation, pers. comm., 1998). The surveys used vegetation habitat analysis, historical references, and anecdotal information from foresters, ranchers, engineers, and biologists. Staff at the Payette National Forest collated and field-validated the information and placed it on a geographical information systems (GIS) map. Analysis of GIS maps allows biologists to predict potential habitat for the species throughout its present range. A team of biologists spent several weeks in 1997 and 1998 surveying the potential sites for ground squirrel activity. The known historic and extant sites increased from 19 in 1996 to 36 in 1998. Of these 36 sites, 27 are currently occupied by northern Idaho ground squirrels. However, most of these sites have less than 20 individuals, and the total population numbers less than 1,000. Only by conducting annual monitoring of sites where animals were translocated from other sites and existing sites will we be able to document future population trends.

Two scientists from Cornell University, Ithaca, New York, who have overseen recent translocations, surveys, and annual monitoring notified us that they will not be able to continue this work in the future. However, one of these scientists agreed to assist with field surveys in 1999, and instructed a team of biologists from the Idaho Department of Fish and Game, Payette National Forest, and the Service for 2 weeks in survey and monitoring methods. This team will continue to coordinate annual surveys for new populations, collect data on population trends, and monitor habitat changes in coordination with the Payette National Forest staff.

Issue 2: One commenter requested that the northern Idaho ground squirrel not be listed because listing does not consider the impact of human welfare, local economy, public value, and private property rights.

Our Response: In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11 (b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word ''solely'' to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*). The legislative history of the 1982 amendments states: ''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' H.R. Rep. No. 567, Part I, 97th Cong., 2d Sess. 20 (1982).

Issue 3: One commenter asserted that constitutional powers were being violated to list the northern Idaho ground squirrel under the Act since there is no substantial and documented interstate commerce involving this subspecies. This assertion is based on the belief that the intention of the U.S. Constitution is to regulate only those activities that substantially affect interstate commerce.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this subspecies, 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 the northern Idaho ground squirrel, 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.

The Federal Government also has the authority under the Property Clause of the Constitution to protect this subspecies. The northern Idaho ground squirrel occurs on the Payette National Forest, Idaho State lands, and private lands. If this subspecies were to become extinct, the diversity of vertebrate life in the Payette National Forest would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances (See *Kleppe* v. *New Mexico,* 429 U.S. 873 (1976); *United States* v. *Alford,* 274 U.S. 264 (1927); *Camfield* v. *United States,* 167 U. S. 518 (1897); *United States* v. *Lindsey,* 595 F. 2d 5 (9th Cir. 1979).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth 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 the northern Idaho ground squirrel are as follows:

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

The historic range of the northern Idaho ground squirrel is not well known. However, it is thought that this subspecies was relatively uncommon throughout its historic range (Forest Service 1997a). All remaining habitat sites for the northern Idaho ground squirrel are small in relation to those of other ground squirrels, ranging in size from 1.2 to 16 hectares (3 to 40 acres), and all are threatened by one or more of the following: forest encroachment into grassland meadows; conversion to agriculture; residential construction; development of recreational facilities such as golf courses; and road construction and maintenance.

The primary threat to the northern Idaho ground squirrel is meadow invasion by conifers (Sherman and Yensen 1994; E. Yensen, pers. comm. 1998, 1999). Fire suppression and the dense regrowth of conifers resulting from past logging activities have significantly reduced meadow habitats suitable for northern Idaho ground squirrels over the past 40 years. As the amount of suitable meadow habitat on public and private lands has been reduced, northern Idaho ground squirrel dispersal corridors have been reduced or eliminated, further constricting the subspecies into smaller isolated habitat areas (Truksa and Yensen 1990). The loss of dispersal corridors has caused some isolated populations to become extirpated in recent years (Sherman and

Yensen 1994; Service 1996). Small populations at several remaining sites are likely to become extirpated as well (Sherman and Yensen 1994; Mangel and Tier 1994).

The fragmented distribution of the northern Idaho ground squirrel is a remnant of what may once have been a more continuous distribution from Round Valley, Idaho, in Valley County north to New Meadows, Idaho, and southwest to Council, Idaho, in Adams County. The forest structure in the area has changed markedly over the past century due to logging and fire suppression, resulting in denser, more even-aged younger stands of trees with thinner and less heterogeneous (not uniform) under-story plant communities (Burns and Zborowski 1996). Fire suppression allowed conifers to invade once suitable meadow habitats, thereby shrinking the size of forb/grass meadows or closing open grassy dispersal/migration corridors entirely to nearby meadow sites. These changes isolated the dry meadows with suitable shallow soils where the northern Idaho ground squirrel finds refuge from the Columbian ground squirrel, in addition to eliminating migration between northern Idaho ground squirrel sites. Remaining dry meadow habitats supporting northern Idaho ground squirrels are now being invaded by young conifer trees, reducing availability of the preferred forage and burrow habitat of this subspecies. Habitat dissection and reduced opportunities for dispersal among habitats prevents gene flow and results in considerable population differentiation (Sherman and Yensen 1994).

Agricultural conversion and rural housing developments near the communities of Round Valley, north to New Meadows, and south to Council, during the past 40 years have fragmented suitable habitats formerly occupied by the northern Idaho ground squirrel. Various types of developments continue to threaten remaining occupied sites in Adams and Valley counties. Occupied ground squirrel habitat near New Meadows was converted to a golf course and associated housing development (Yensen 1985), which resulted in the eradication of northern Idaho ground squirrels by poisoning because they were impacting the fairways and golf greens (E. Yensen, pers. comm. 1999).

A 51.5 kilometer (km) (32 mile (mi)) gravel road from Council to Cuprum, Idaho, is scheduled to be paved by the year 2001 (U.S. Department of Transportation 1998). Approximately 6.4 km (4 mi) of this project runs through historic and currently occupied habitat of the northern Idaho ground squirrel. The road improvement project will seasonally extend vehicle access to four occupied northern Idaho ground squirrel sites. These four sites will be subject to increased mortality risk from vehicular traffic, and possibly recreational shooting (Forest Service 1997a). The Federal Highways Administration consulted with us and the Forest Service in developing conservation measures as part of their biological assessment for the Council to Cuprum Road paving project (Forest Service 1997a). Conservation measures include actions to attract northern Idaho ground squirrels away from the paved highway to adjacent but suitable habitat to avoid passing vehicles. Funding for these conservation measures was approved by the U.S. Department of Transportation to monitor the measures before and after the road improvements have been made. Monitoring was initiated in 1998 and will continue through 2003. At this time, it is uncertain whether the proposed conservation measures will be successful in protecting remaining populations in the vicinity of the road improvement project.

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

Recreational shooting has contributed to the decline of northern Idaho ground squirrels at various sites (Yensen 1985, 1991; E. Yensen, pers. comm. 1999). Sites adjacent to housing developments, farms, and roads, in particular, are subject to a high rate of recreational shooting.

Four population sites have been documented as being subjected to recreational shooting (E. Yensen, pers. comm. 1998). One site is located next to a road on National Forest land. It was common to find .22 rifle casings on the road from people presumably shooting the ground squirrels. The subspecies has now been extirpated from this site as a result of shooting. Another site on private land that had both northern Idaho ground squirrels and Columbian ground squirrels was routinely used by recreational shooters, and, as a result, the population is now extinct there. Another site on private land at New Meadows was periodically used by recreational shooters until a golf course was put in at the site. The operators of the golf course then poisoned the remaining population of northern Idaho ground squirrels to eliminate them. The fourth site is partially located on private land and partially located on Forest Service land and also is subjected to shooting (E. Yensen, pers. comm. 1999).

Vandalism, either by shooting or poisoning, is a threat to most of the populations. Many private landowners consider ground squirrels to be a pest that requires elimination. In June 1998, Dr. Eric Yensen of Albertson College, who has done research on the subspecies, approached a private landowner for permission to check on a northern Idaho ground squirrel population occurring on his land. The landowner told Dr. Yensen he wanted to know where the population was so he could go out and poison them. Since the landowner was threatening to eliminate the population, Dr. Yensen declined to tell him exactly where the site was. Dr. Yensen was then refused permission to check on the site by the landowner. Other landowners have made similar threats against northern Idaho ground squirrel populations to Dr. Yensen (E. Yensen, pers. comm. 1999). Since most of the population sites contain less than 20 animals, and less than 1,000 animals overall, shooting and poisoning could have significant adverse impacts (E. Yensen, pers. comm. 1999).

C. Disease or Predation

Disease is not thought to be a major factor affecting the northern Idaho ground squirrel. The parasitic nematode, *Pelodera strongyloides,* infects the eyes of the northern Idaho ground squirrel (Sherman and Yensen 1994; Yensen *et al.* 1996). This eye worm is not currently known to be a cause of mortality in existing populations (Yensen *et al.* 1996). Plague (*Yersina pestis*) a contagious bacterial disease in rodents, has not yet been found in any northern Idaho ground squirrel populations (Yensen *et al.* 1996.). The disease, once established, could decimate these squirrels. Blood analysis to determine whether pandemic diseases are present have not been done on the northern Idaho ground squirrel.

The primary predators of the northern Idaho ground squirrel include badger (*Taxidea taxus*), goshawk (*Accipiter gentilis*), prairie falcon (*Falco mexicanus*), and occasionally red-tailed hawk (*Buteo jamaicensis*). Predators may threaten many of the smaller, more isolated populations of northern Idaho ground squirrel. Badger activity has been noted at several of these sites (Sherman and Gavin 1997). Badgers are efficient predators and could eliminate an entire population of 20 or so animals in just a few days. Male ground squirrels, due to their above-ground active behavior patterns, are particularly subject to increased predation risk

during the mating period. Juveniles are also subject to a high degree of predation during their first year (Sherman and Yensen 1994). Also, domestic cat (*Felis catus*) predation has been documented at two sites because the sites are located near residential housing (E. Yensen, pers. comm. 1999).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Idaho recognizes the northern Idaho ground squirrel as a ''Species of Special Concern'' (Idaho Department of Fish and Game 1994). Because of this status, the northern Idaho ground squirrel is, by State law, protected from taking (shooting, trapping, poisoning) or possession. To date, however, protection from recreational shooting has not been adequately enforced by the State, and the northern Idaho ground squirrel remains vulnerable to this type of activity (Yensen 1985).

Local land use ordinances and other regulations are inadequate to protect this subspecies. For example, in Adams County where 99 percent of northern Idaho ground squirrel population sites are found, land use regulations allow for single and multiple housing developments under a permit system. There is no consideration under the existing permit system for impacts that may result to northern Idaho ground squirrels from housing or recreation developments in or adjacent to their habitat. With no limitations on development of northern Idaho ground squirrel habitat, it is anticipated that human population growth and development in the foreseeable future will impact ground squirrel sites.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Other factors affecting conservation actions for this subspecies include land ownership patterns, prelisting activities, and conservation efforts on private and public lands. All active northern Idaho ground squirrel sites occur on private, State, and Payette National Forest lands. A conservation agreement (Agreement) was finalized in July 1996, between us and the Payette National Forest (Service 1996). The duration of the Agreement is 5 years. The Agreement identifies conservation and land management actions that will provide habitat favorable to the northern Idaho ground squirrel. These actions, some already in the implementation phase, include controlled burning of selected meadows to reduce over-story and to improve forage preferred by the northern Idaho ground squirrel, timber harvest in select areas to open meadows where active sites are found, and timber harvest to provide dispersal corridors for improved connectivity between active populations (Forest Service 1998). For example, 3.3 million board feet of timber is proposed for harvest in the Lick Creek drainage from 1998 to 2000 (Forest Service 1997b). The sale is designed to reconnect an active population with other nearby populations. It will also expand the size of 12 meadow habitats on Federal lands that are favorable to recolonization by the northern Idaho ground squirrel. Two units were completed in 1999, and the rest will be harvested in 2000. Although the Agreement does not currently remove or reduce threats to the degree where listing may be precluded, the conservation actions implemented will facilitate recovery.

A relocation plan, developed by scientists from Cornell University and Albertson College, was initiated in the spring of 1997, and continued in 1998 and 1999. A total of 76 squirrels were transplanted to 2 sites on lands managed by the Forest Service that had been treated through burning and timber harvest (Sherman and Gavin 1997; Gavin *et al.* 1998). One site had a small existing population of northern Idaho ground squirrels, and at the other site, the subspecies had been extirpated. Initial results indicate that some translocated females were lactating, and juveniles were observed at both sites, indicating successful reproduction (Sherman and Gavin 1997; Gavin *et al.* 1998). A report compiling the results of monitoring the transplant is expected in the spring of 2000. Whether long-term benefits to ground squirrel recovery result from these actions will be unknown for several years.

Habitat and resource competition with the Columbian ground squirrel is a factor affecting the survival of the northern Idaho ground squirrel. Competition from the Columbian ground squirrel could be an important factor in the decline of the northern Idaho ground squirrel (Dyni and Yensen 1996). The northern Idaho ground squirrel may have been forced into areas containing shallower soils due to competition from Columbian ground squirrels (Sherman and Yensen 1994). The Columbian ground squirrel is larger and prefers deeper areas with soils that provide better over-winter protection and higher nutrients. Where both subspecies occur, the northern Idaho ground squirrel tends to occupy the shallower soils but requires deeper soils less than 1 m (3.2 ft) for nests (Yensen *et al.* 1991). The Columbian ground squirrel is not restricted by soil depth; typically, their burrow systems are associated with degree of slope, well-drained soils, and number of native forbs (Weddell 1989).

Winter mortality may be a contributing factor for northern Idaho ground squirrel decline, especially when juvenile squirrels enter torpor without sufficient fat reserves and snow levels are below average (Paul Sherman, pers. comm., 1997). Soils tend to freeze to greater depths where snow levels are shallow. When this occurs, ground squirrels are unable to thermoregulate or maintain sufficient fat reserves. Although the relationship between ground squirrels and weather is complex, (Yensen *et al.* 1992) sites may have been adversely affected by drought and over winter mortality in the early 1990's. Winter mortality is of special concern since many remaining sites contain few individuals. High winter mortality combined with the loss of suitable vegetation conditions can result in the permanent loss of isolated populations.

As a result of the factors discussed above, and due to the small population sizes at remaining sites and the low total number of individuals, the northern Idaho ground squirrel may have little resilience to naturally occurring events (Gavin *et al.* 1993). Small populations are often highly vulnerable to natural climatic fluctuations as well as catastrophic natural events (Mangel and Tier 1994). Gavin *et al.* (1993) used a computer population viability simulation program (VORTEX), using natality (birth) and mortality (death) values recorded over 8 years from an intensively studied northern Idaho ground squirrel population (Sherman and Yensen 1994) to examine population viability. Variables in the model included no natural immigration. The population viability analysis used 50 individuals, a figure that was 30 individuals lower than the actual population size of 80 individuals (Sherman and Yensen 1994). The model calculated that all but 1 of 100 populations would become extinct in less than 20 years.

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the northern Idaho ground squirrel. Based on this evaluation, the preferred action is to list the northern Idaho ground squirrel as a threatened species. The subspecies has declined from approximately 5,000 animals in 1985 to fewer than 1,000 animals in 1998. Although additional occupied sites have been recently discovered, numerous extirpations have occurred. Most remaining populations

consist of small numbers of individuals isolated from other populations. Remaining occupied sites on private land are not protected from threats to the species or its' habitat. Existing land use regulations are inadequate to protect the northern Idaho ground squirrel from habitat destruction resulting from development. Some ground squirrel habitat improvement projects have been initiated at two sites on Payette National Forest lands. While these efforts may be important to the long-term conservation of the northern Idaho ground squirrel, they are currently very limited in their applicability and the threat of meadow loss still continues. Benefits to the northern Idaho ground squirrel from current conservation actions may not be realized or quantifiable for years. While the northern Idaho ground squirrel is not in immediate danger of extinction because of ongoing conservation efforts, the subspecies could become endangered in the foreseeable future if remaining sites decline further. Not listing this taxon would be inconsistent with the intent of the Act.

Critical Habitat

Critical habitat is defined in section 3 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) 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 the northern Idaho ground squirrel 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 shooting and other forms of human activity. 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 the northern Idaho ground squirrel would be prudent.

Due to the small number of populations, the northern Idaho ground squirrel is vulnerable to shooting, colony destruction, 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. We have examined the evidence available for the northern Idaho ground squirrel, and have knowledge of two separate incidents where northern Idaho ground squirrel colonies were eliminated on private lands from poisoning and shooting. As stated in threat factor D, northern Idaho ground squirrels are, by Idaho State law, protected from taking (shooting, trapping, poisoning) or possession, but protection from recreational shooting has not been adequately enforced by the State, especially in those areas where recreational shooting of nearby Columbian ground squirrels is popular. However, we do not have any evidence that the publication of critical habitat maps would provide additional location information that was not already available and thus increase the threat to northern Idaho ground squirrels from shooting and poisoning. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, at this time we cannot make a finding that the identification of critical habitat will increase the degree of threat to these species from taking or other human activity.

In the case of this species, some benefits may result from 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, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that designation of critical habitat is prudent for the northern Idaho ground squirrel.

As explained in detail in our Listing Priority Guidance for FY 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the northern Idaho ground squirrel will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the northern Idaho ground squirrel without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the northern Idaho ground squirrel 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 Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Without the elevated profile that Federal listing affords, little likelihood exists that any conservation activities would be undertaken. 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 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 insure 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.

The Act requires the appropriate land management agencies to evaluate potential impacts to the species that may result from activities they authorize or permit. Consultation under section 7 of the Act is required for activities on Federal, State, county, or private lands that may impact the survival and recovery of the northern Idaho ground squirrel, if such activities are funded, authorized, carried out, or permitted by Federal agencies. Federal agencies that may be involved with this subspecies include the Forest Service, Federal Highway Administration, BLM, Office of Surface Mining, and Natural Resource Conservation Service. Section 7 requires these agencies to consider potential impacts to the northern Idaho ground squirrel prior to approval of any activity authorized or permitted by them.

Federal agency actions that may require consultation include removing, thinning, or altering vegetation; constructing of roads or camping sites in the vicinity of active and historical sites; recreational home developments; off-road vehicle use areas; gravel or sand mining activities; campground construction; mining permits and expansion; highway construction; and timber harvest.

Listing this subspecies as threatened provides for development of a recovery plan. Such a plan would identify both State and Federal efforts for conservation of the subspecies and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the subspecies. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of this subspecies.

The Act and implementing regulations found at 50 CFR 17.31 describe general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are at 50 CFR 17.32. 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, permits are also available 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 when a species is proposed for listing, 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 action will not likely result in a violation of section 9:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.,* logging, flood and erosion control, mineral and housing development, off-road vehicle permitting or park development, recreational trail and campground development, road construction, prescribed burns, pest control activities, utility lines or pipeline construction) when such activity is conducted in accordance with any incidental take statement prepared by us in accordance with section 7 of the Act; and

(2) Clearing of a firebreak around one's personal residence.

Activities that we believe could potentially result in a violation of section 9 include but are not limited to:

(1) Activities that directly or indirectly result in the actual death or injury of the northern Idaho ground squirrel, or that modify the known habitat of the subspecies by significantly modifying essential behavior patterns (*e.g.,* intensive plowing and conversion to cropland, shooting, intentional poisoning, road and trail construction, water development and impoundment, mineral extraction or processing, off-road vehicle use, and unauthorized application of herbicides or pesticides);

(2) Activities within the northern Idaho ground squirrel hibernating period (mid July through early April) and near burrow areas that include road, pipeline, or utility construction, herbicide application, or other activities that would alter the burrow systems and food sources of the northern Idaho ground squirrel; and

(3) Activities authorized, funded, or carried out by Federal agencies (*e.g.,* logging, flood and erosion control, mineral and housing development, off-road vehicle permitting or park development, recreational trail and campground development, road construction, prescribed burns, pest control activities, utility lines or pipeline construction) when such activity is not conducted in accordance with any incidental take statement prepared by us in accordance with section 7 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 or requests to obtain approved guidelines for actions within northern Idaho ground squirrel habitat should be directed to the U.S. Fish and Wildlife Service, Snake River Basin Office, Boise, Idaho (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals 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 determined that we do not need to prepare an Environmental

Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Endangered Species Act, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Richard Howard, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Amend §17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife 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						
MAMMALS							
*	*	*	*	*	*	*	
Ground squirrel, northern Idaho.	*Spermophilus brunneus brunneus.*	U.S.A. (ID)	NA	T	693	NA	NA
*	*	*	*	*	*	*	

Dated: March 29, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–8346 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 991116305–0083–02; I.D. No. 110599D][A]

RIN 0648–AL82

Designated Critical Habitat: Critical Habitat for Johnson's Seagrass

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

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for Johnson's seagrass (*Halophila johnsonii*) pursuant to section 4 of the Endangered Species Act (ESA). Johnson's seagrass is found on the east coast of Florida from Sebastian Inlet to central Biscayne Bay. Within this range, 10 areas are being designated as critical habitat: a portion of the Indian River Lagoon, north of the Sebastian Inlet Channel; a portion of the Indian River Lagoon, south of the Sebastian Inlet Channel; a portion of the Indian River Lagoon near the Fort Pierce Inlet; a portion of the Indian River Lagoon, north of the St. Lucie Inlet; a portion of Hobe Sound; a site on the south side of Jupiter Inlet; a site in central Lake Worth Lagoon; a site in Lake Worth Lagoon, Boynton Beach; a site in Lake Wyman, Boca Raton; and a portion of Biscayne Bay. NMFS is modifying various aspects of the proposed rule, including the removal as critical habitat of the Intracoastal Waterway (ICW) channel in the designated areas, and enlarging the Lake Wyman site.

The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

DATES: This rule is effective May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Layne Bolen, NMFS, Southeast Region, 850–234–6541 ext 237, or Marta Nammack, NMFS, Office of Protected Resources, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule to list Johnson's seagrass as a threatened species on September 15, 1993 (58 FR 48326), and a proposed rule to designate critical habitat on August 4, 1994 (59 FR 39716). A public hearing on both the proposed listing and critical habitat designation was held in Vero Beach, Florida, on September 20, 1994. As a result of public input during the comment period, NMFS postponed further action on listing. In order to update the original status report (Kenworthy, 1993) and to include information from new field and laboratory research on species distribution, ecology, genetics and phylogeny, NMFS convened a workshop on the biology, distribution, and abundance of *H. johnsonii*. The results of this workshop were summarized in the proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468). The final rule to list Johnson's seagrass as a threatened

species was published by NMFS on September 14, 1998 (63 FR 49035).

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of final listing, critical habitat was not determinable because new information needed to perform the required analysis was not yet available. On February 23, 1999, NMFS established and convened a recovery team to prepare a recovery plan and develop recommendations for critical habitat for Johnson's seagrass. Based on these recommendations and the best available scientific data on the distribution, ecology, and genetics of this species, NMFS published a re-proposed rule on December 2, 1999 (64 FR 67536), to designate critical habitat for Johnson's seagrass. This final rule takes into consideration the new information and comments received in response to this re-proposed rule.

The final designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from designating critical habitat, over and above those that result from listing the species, are expected to be minimal.

The use of the term ''essential habitat'' within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species...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 the species...upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species.'' The term ''conservation'' as defined in section 3(3) of the ESA, 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.''

In designating critical habitat, NMFS must consider the requirements of the species, including: (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, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species (50 CFR 424.12(b)).

In addition, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, food resources, water quality or quantity, and vegetation and sediment types and stability (50 CFR 424.12(b)).

Benefits of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict state or private activities within the area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and describing the features within those areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of ESA section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the ESA section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for both the survival and recovery'' of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that ''reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery''of the species (50 CFR 402.02). Using these definitions, in most cases activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, in most cases the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside of the species' current range have been designated. In these cases, Federal agencies are required to consult with NMFS under section 7 (50 CFR 402.14 (a)) when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides Federal agencies with a clearer indication as to when consultation under section 7 of the ESA is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when or where Johnson's seagrass is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to ESA section 7 (i.e., activities that may affect essential features of the designated area). For example, disposal of waste material in water adjacent to a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation also assists Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in ESA section 7 consultations. This is particularly true in cases where there are alternative areas that would provide for the conservation of the species and the success of the action. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including

conservation regulations that restrict private as well as Federal activities. No additional conservation regulations are associated with this critical habitat designation, however. Any future proposal would require a full, separate rulemaking. Other Federal, state and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Consideration of Economic and Other Factors

The economic, environmental, and other impacts of a designation must also be evaluated and considered. NMFS must identify present and future activities that may adversely modify designated critical habitat or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts that specifically result from designating critical habitat above the economic and other impacts attributable to listing the species or resulting from other authorities. These incremental impacts are expected to be minimal (see Benefits of Designating Critical Habitat section). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all persons and entities subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; however, this is not the case for threatened species. Section 4(d) of the ESA directs the Secretary to implement regulations ''to provide for the conservation of [threatened] species'' that may include extending any or all of the prohibitions of section 9(a)(2) to threatened species.

Section 9(a)(2)(E) of the ESA also prohibits violations of protective regulations for threatened species of plants implemented under section 4(d). NMFS may issue protective regulations pursuant to section 4(d) for Johnson's seagrass in a future rulemaking.

Impacts attributable to listing also include those resulting from the responsibility of all Federal agencies under section 7 of the ESA to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or adverse modification of its habitat, whether or not that habitat has been designated as critical.

Need for Special Management Consideration or Protection

NMFS has determined that the essential areas and features described here are at risk and may require special management consideration or protection. Special management may be required because of the following activities: (1) Vessel traffic and the resulting propeller dredging and anchor mooring; (2) dredging; (3) dock, marina, and bridge construction and shading from these structures; (4) water pollution; and (5) land use practices including shoreline development, agriculture, and aquaculture. Activities associated with recreational boat traffic account for the majority of human use associated with the critical habitat areas. The destruction of the benthic community due to boating activities, propeller dredging, anchor mooring, and dock and marina construction was observed at all sites during a study by NMFS from 1990 to 1992. These activities severely disrupt the benthic habitat, breaching root systems, severing rhizomes, and significantly reducing the viability of the seagrass community. Propeller dredging and anchor mooring in shallow areas are a major disturbance to even the most robust seagrasses. This destruction is expected to worsen with the predicted increase in boating activity. Trampling of seagrass beds, a secondary effect of recreational boating, also disturbs seagrass habitat. Populations of Johnson's seagrass inhabiting shallow water and water close to inlets, where vessel traffic is concentrated, will be most affected.

The constant sedimentation patterns in and around inlets require frequent maintenance dredging, which could either directly remove essential seagrass habitat or indirectly affect it by redistributing sediments, burying plants and destabilizing the bottom structure. Altering benthic topography or burying the plants may remove them from the photic zone.

Permitted dredging of channels, basins, and other in-and on-water construction projects cause loss of Johnson's seagrass and its habitat through direct removal of the plant, fragmentation of habitat, and shading. Docking facilities that, upon meeting certain provisions, are exempt from state permitting also contribute to loss of Johnson's seagrass through construction impacts and shading. Fixed add-ons to exempt docks (such as finger piers, floating docks, or boat lifts) have recently been documented as an additional source of seagrass loss due to shading (Smith and Mezich, 1999).

Decreased water transparency caused by suspended sediments, water color, and chlorophylls could have significant detrimental effects on the distribution and abundance of the deeper water populations of Johnson's seagrass. A distribution survey in Hobe and Jupiter Sounds indicates that the abundance of this seagrass diminishes in the more turbid interior portion of the lagoon where reduced light limits photosynthesis.

Other areas of concern include seagrass beds located in proximity to rivers and canal mouths where low salinity, highly colored water is discharged. Freshwater discharge into areas adjacent to seagrass beds may provoke physiological stress upon the plants by reducing the salinity levels. Additionally, colored waters released into these areas reduce the amount of sunlight available for photosynthesis by rapidly attenuating shorter wavelengths of Photosynthetically Active Radiation.

Also, continuing and increasing degradation of water quality due to increased land use and water management threatens the welfare of seagrass communities. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous loading via urban and agricultural land run-off stimulate increased algal growth that may smother Johnson's seagrass, shade rooted vegetation, and diminish the oxygen content of the water. Low oxygen conditions have a demonstrated negative impact on seagrasses and associated communities.

Special consideration and protection for these and other habitat features are evaluated in the ESA section 7 consultation process. Special management needs and the protection of these habitat features are being addressed in the development and implementation of the recovery plan.

Activities That May Affect Critical Habitat

A wide range of activities funded, authorized or carried out by Federal agencies may affect the essential habitat requirements of Johnson's seagrass. These include authorization by the COE for beach nourishment, dredging, and related activities including construction of docks and marinas; bridge construction projects funded by the Federal Highway Administration; actions by the U.S. Environmental Protection Agency and the COE to manage freshwater discharges into

waterways; regulation of vessel traffic by the U.S. Coast Guard (USCG); management of national refuges and protected species by the U.S. Fish and Wildlife Service; management of vessel traffic (and other activities) by the U.S. Navy; approval of changes to Florida's coastal zone management plan by NOAA's National Ocean Service; and management of commercial fishing and protected species by NMFS.

Expected Impacts of Designating Critical Habitat

This designation will identify specific habitat areas that have been determined to be essential for the conservation of Johnson's seagrass and that may be in need of special management considerations or protection. It will require Federal agencies to evaluate their activities with respect to the critical habitat of this species and to consult with NMFS pursuant to section 7 of the ESA before engaging in any action that may affect the critical habitat.

As discussed in the section on activities that may impact essential habitat and features, the Federal activities that may affect critical habitat are the same activities that may affect the species itself. For plants, this is particularly true when analyzing the impacts of designating critical habitat. For example, the activities that affect water quality, an essential feature of critical habitat, will also be considered in terms of how they affect the species itself.

Federal agencies will continue to engage in ESA section 7 consultations to determine if the actions they authorize, fund or carry out are likely to jeopardize the continued existence of Johnson's seagrass; however, with designation, they would also need to address explicitly impacts to the species' critical habitat. This is not expected to affect materially the scope of future consultations or result in greater economic impacts, since most impacts to Johnson's seagrass habitat will already be considered in ESA section 7 consultations.

The economic costs to be considered in a critical habitat designation are the incremental costs of designation above the economic impacts attributable to listing or attributable to authorities other than the ESA. NMFS has determined that there are few, if any, incremental net costs for areas within the species' current distribution, and no areas outside the current range are being designated as critical habitat.

Critical Habitat of Johnson's Seagrass

The biology of Johnson's seagrass is discussed in the final rule to list the species as threatened (63 FR 49035, September 14, 1998) and includes information on the current status of the species, its life history characteristics and habitat requirements, as well as projects, activities and other factors affecting the species. The physical habitat that supports Johnson's seagrass includes both shallow intertidal and deeper subtidal zones. The species prospers and is able to colonize and maintain stable populations either in water that is clear and deep (2-5 m) or in water that is shallow and turbid. In tidal channels, it inhabits coarse sand substrates.

Based on published reports and discussions with seagrass experts, the distributional range of Johnson's seagrass is limited to the east coast of Florida from central Biscayne Bay (25°45′ N. lat.) to Sebastian Inlet (27°51′ N. lat.). There have been no reports of healthy populations of this species outside the presently known range.

Although the species occurs throughout the Indian River Lagoon and Lake Worth, the designated critical habitat areas encompass the largest known contiguous populations of Johnson's seagrass, those areas known to have persistent populations, those populations known to have persistent flowering, those populations found to have unique genetic variability, and/or populations that include the northern and southern limits of the species' range.

The species is distributed in patches within its range. The dimensions of patches range from a few square centimeters to approximately 327 square meters (sq.m). The survival of the species likely depends on maintaining its existing viable populations, especially the areas where the larger patches are found. The Sebastian Inlet population is believed to be the northern limit of its distribution and includes flowering patches that have a known persistence of at least 10 years. Ft. Pierce Inlet and Jupiter Inlet are also found to have persistent and flowering populations. The other designated critical habitat areas represent the core range of the species where Johnson's seagrass is found to be abundant compared to other parts of its range, exhibits unique genetic make-up, or comprises the southern limit of its range.

Spread of the species into new areas is limited by its reproductive potential. Johnson's seagrass possesses only female flowers; thus vegetative propagation, most likely through asexual branching, appears to be its only means of reproduction and dispersal. If an established community is disturbed, regrowth and reestablishment are extremely unlikely. If extirpated from an area, it is doubtful that the species would be capable of repopulation. This species' method of reproduction impedes the ability to increase distribution as establishment of new vegetation requires considerable stability in environmental conditions and protection from human-induced disturbances.

Based on the best available information, general physical and biological features of the critical habitat areas include adequate water quality, salinity levels, water transparency, and stable, unconsolidated sediments that are free from physical disturbance. The specific areas occupied by Johnson's seagrass are those with one or more of the following criteria: (1) Locations with populations that have persisted for 10 years; (2) locations with persistent flowering populations; (3) locations at the northern and southern range limits of the species; (4) locations with unique genetic diversity; and (5) locations with a documented high abundance of Johnson's seagrass compared to other areas in the species' range. Explanations for these criteria are:

1. *Persistent populations*. Surveys of *H. johnsonii* distribution and abundance in the Indian River Lagoon indicate that populations fluctuate dramatically. In some areas populations disappear and re-appear on both intra- and inter-annual time scales (Virnstein *et al.*, 1997). Some populations have disappeared and not returned. Since sexual reproduction and seed dispersal are unknown, this species may rely on vegetative fragmentation for recruitment and establishment of new populations. Recruitment from fragmentation and migration are random processes which do not guarantee the persistence of the species in any one location. Perennial populations which have persisted for 10 years exist in several locations, including Sebastian Inlet, Fort Pierce Inlet, Jupiter Inlet, and Hobe Sound. Environmental characteristics of these sites appear favorable to the species, while in other locations in the lagoon, populations have disappeared. Locations where populations have persisted have been designated as critical habitat.

2. *Persistent flowering populations*. The existence of male flowers or recruitment by seed have not been documented for *H. johnsonii*. These observations suggest that this species does not reproduce sexually, and if it

does, it is a very rare event. Yet, large clones of mature female plants flower prolifically at several locations, including Sebastian Inlet, Fort Pierce Inlet, Jupiter Inlet, and Lake Worth Lagoon. The environmental conditions at these sites appear to be suitable for flowering, and if there are any males present, these would be likely habitats for successful reproduction. Locations where there are persistent flowering populations have received critical habitat designation.

3. *Northern and southern ranges of the populations*. The geographical limits of the distributional range of a species can indicate a reduction or expansion of the species' range. Greater adaptative stresses can occur at the limits of the species' range. If the range extension were shrinking, the edges should be protected to prevent further loss. In the alternative, the distribution limits may be a point where the populations are expanding and invading new environments. The unique phenotypic and genotypic characteristics of these populations could be an important reservoir for characteristics resistant to extinction and conducive to survival and growth. The northern and southern ranges of Johnson's seagrass are defined as Sebastian Inlet and central Biscayne Bay, respectively. Portions of these limits to the species' range have been designated as critical habitat for Johnson's seagrass.

4. *Populations with unique genetic variability*. The Boca Raton and Boynton Beach sites have populations which are distinguished by a higher index of genetic variation than any of the central and northern populations examined to date. These two sites possibly represent a genetically semi-isolated group which could be the reservoir of a large part of the overall genetic variation found in this species. Information is lacking on the geographic extent of this genetic variability. Locations with populations that have unique genetic variability have been designated as critical habitat.

5. *Areas of abundance*. The Lake Worth Lagoon and Palm Beach County seagrass populations represent an abundant core of *Halophila* species, including Johnson's seagrass. Previously a freshwater lake, Lake Worth was transformed into a lagoon beginning in 1877 when an ocean inlet was stabilized. With dredging of the ICW, shoreline development, and sewage disposal, the lagoon was permanently altered. Presently, there are about 2000 acres of seagrass in the lagoon covering 35 percent of the bottom. It is estimated that between 20 and 25 percent of the seagrass coverage is comprised of mixed assemblages of *H. decipiens* and *H. johnsonii*. This is proportionately more *Halophila* coverage than occurs elsewhere along the southeast coast of Florida. Presently, conditions within Lake Worth Lagoon and in Palm Beach County in general appear to be conducive to the survival of *H. johnsonii*. Three locations within Lake Worth Lagoon have been designated as critical habitat. The critical habitat area in Lake Worth Lagoon, near Bingham Island, consists of the largest recorded contiguous patch of Johnson's seagrass: a 30-acre meadow of Johnson's seagrass intermixed with sparse coverage of *H. decipiens* and *Halodule wrightii* (Smith and Mezich, 1991 and 1999).

NMFS is not including in the final designation any areas outside the species' currently known geographical range. NMFS has concluded that, at this time, proper management of the essential features of the areas around Sebastian and Ft. Pierce Inlet, Hobe Sound, Jupiter Inlet, Lake Worth, Boca Raton, and northern Biscayne Bay will be sufficient to provide for the survival and recovery of this species. NMFS may reconsider this evaluation and propose additional areas for critical habitat at any time. Johnson's seagrass occurs in numerous locations throughout its range in areas outside of those currently being designated as critical habitat. Information on genetic variability and persistence of Johnson's seagrass is currently lacking in these areas. Future research, however, involving genetic studies and comprehensive, long-term field surveys, could identify additional areas that are essential to the conservation of the species and require special management considerations, and would, therefore, warrant designation as critical habitat. Long-term surveys of the distribution of Johnson's seagrass may allow further refinement of the Biscayne Bay critical habitat area in the future. Additional areas that may be considered for critical habitat in future rulemaking include locations between Ft. Pierce Inlet and St. Lucie Inlet, west of the Jupiter Inlet, near the Boynton Beach Inlet and other areas of Lake Worth Lagoon. Also, if a male flower of Johnson's seagrass is identified in an area, this area should be designated as critical habitat.

The regulatory description of critical habitat for Johnson's seagrass can be found at the end of this **Federal Register** document.

Summary of Responses

Two public hearings were held on the proposed action: one in West Palm Beach, Florida, on December 16, 1999, and one in Miami, Florida, on January 31, 2000. Thirty-seven individuals provided oral testimony at the public hearings. Forty-nine comments were submitted in response to the proposed rule. Many comments were in support of designating critical habitat for Johnson's seagrass. However, the majority of comments were concerned about economic impacts from the designation. New information and comments received in response to the proposed rule are summarized here.

1. Economic Considerations

Many commenters believed that critical habitat designation would create a substantial economic burden that could delay projects and possibly prohibit certain activities, including recreational boating. The COE commented that critical habitat would place an unnecessary significance to these areas and an additional coordination and consultation burden that would be costly both in terms of the project delay and the cost directly associated with the consultation. Additional commenters believed that the designation would impose additional requirements or economic impacts upon small and/or private entities beyond those which may accrue from section 7 of the ESA.

Response: The designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself. Incremental costs are expected to be no greater than those which occurred at the time of listing (See Consideration of Economic and Other Factors).

ESA section 7 applies only to Federal actions and requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat determined to be critical. The consultation requirements of section 7 are non-discretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS to ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

Most of the effect on non-Federal interests will result from the no-jeopardy requirement of section 7 of the ESA, which is a function of listing a species, not designating its critical habitat. Whether or not critical habitat is designated, non-Federal interests must conduct their actions in a manner consistent with the requirements of the ESA. If the activity is funded, permitted, or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which results from listing a

species, not from designating its critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, pursuant to NMFS' ESA implementing regulations, in most cases any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species (See the definitions in 50 CFR 402.02). Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Notwithstanding its lack of economic impact, the designation of critical habitat remains important because it identifies habitat that is essential for the continued existence of a species and, therefore, indicates habitat that may require special management attention. This facilitates and enhances Federal agencies' ability to comply with section 7 of the ESA by ensuring that they are aware when their activities may affect listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2) of the ESA, critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

On September 1, 1998, NMFS completed a conference opinion (CO) with the U.S. Army Corps of Engineers (COE) on maintenance dredging which concluded that normal maintenance dredging activities and routine operations on ports are not likely to jeopardize the continued existence of Johnson's seagrass or adversely modify proposed critical habitat. If requested by the COE, NMFS will review the CO, and, if no significant changes have occurred in the action as planned or in the information used during the conference, NMFS will confirm the CO as the biological opinion on the project and no further section 7 consultation will be necessary. NMFS expects that maintenance dredging will not be negatively impacted by this final critical habitat designation.

2. Permitting Delays

Various commenters voiced concern that dredging projects, including maintenance dredging, would be impaired and possibly prohibited in these areas. Concerns were that the designation would: (a) disrupt the COE permitting process and result in major permitting delays from the section 7 consultation process; (b) impair Palm Beach Harbor expansion projects and Lake Worth Lagoon clean-up efforts; (c) prevent or slow down and make more costly, a dredging project to remove contaminated sediments of the Miami River; (d) essentially stop the maintenance dredging of inlets, the ICW, and many private marina facilities; and (e) further delay and possibly impede FDOT bridge construction and other projects due to the section 7 process.

Response: NMFS expects that normal maintenance dredging activities and routine operations on ports will not be negatively impacted by this critical habitat designation. The COE has already conferred with NMFS on the proposed designation for maintenance dredging. Furthermore, there are fewer delays in permitting because the Federal agency knows in the planning process where designated critical habitat areas are for the species (See Benefits of Designating Critical Habitat). The critical habitat areas account for approximately 7 percent of the entire range of the species, and the designation assists Federal agencies (or those delegated to represent Federal lead agencies) in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in ESA section 7 consultations. Individual permits issued by the COE are being dealt with through the ESA section 7 process and in review by the COE's Nationwide Permit process. These projects will be examined programmatically by waterbody and/or project type.

As noted earlier, excluding an area from critical habitat does not exclude it from consultation under ESA section 7, based on expected impacts to the species. The species has been listed since September 1998, and Federal agencies have been required to confer on impacts to this species since it was proposed for listing in 1994. The designation would not impair or prohibit the timely and economical maintenance of the ICW or other federally-funded projects. The requirement for a Federal action agency to consult on actions which may affect a listed species occurs at the time the species is listed.

3. Stop or Prohibit Projects/Activities

Many commenters believed that the outcome of critical habitat designation and the intention of NMFS is to stop or prohibit projects or activities. One commenter believed that NMFS seeks to ''kill the public's recreational use of Biscayne Bay.''

Response: The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery action. The designation of critical habitat helps alert public and private entities to the area's importance, and under section 7 provisions, a critical habitat designation requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to adversely modify or destroy critical habitat. The designation assists agencies in planning future actions. It is not the intention of NMFS to prohibit boating or other activities in the range of Johnson's seagrass.

The designation of critical habitat allows for early consultation and development of project alternatives. The Section ''Need For Special Management Considerations'' provides an overview of recognized impacts or threats to the species and its primary constituent elements (such as water quality and substrate stability) that may require special management considerations. Special consideration and protection for these and other habitat features are evaluated in the ESA section 7 consultation process. Special management needs and the protection of these habitat features are being addressed in the development and implementation of the recovery plan.

4. Intracoastal Waterway and Maintenance Dredging

This is a subset of the concerns raised earlier. A number of commenters felt that the inclusion of the channel of the ICW was unnecessary for the conservation of the species and an economic burden to maintenance dredging of the waterway and that it would impair and probably prohibit the proper maintenance of the ICW. Similar comments were that the proposed designation would potentially decrease or possibly eliminate maintenance dredging of the ICW in Martin County, substantially impacting public safety and Martin County's economy, and that loss of ICW maintenance dredging may include total prohibition of boating activity within the critical habitat limits.

Response: After re-evaluation of the information, feedback from Recovery Team members with expertise in the distribution, abundance and habitat needs for the species, and public input, NMFS has determined that the (approximately 18.5 km) Federally marked navigation channel of the ICW occurring in the critical habitat areas will be excluded from critical habitat designation. NMFS has determined that the exclusion of the channel of the ICW is possible while still allowing for conservation of the species. The exclusion of the ICW channel occurs in

the following critical habitat areas: (1) An interior portion of the Indian River Lagoon, north of the St. Lucie Inlet; (2) Hobe Sound; (3) the site in central Lake Worth Lagoon near Bingham Island; (4) a site in Lake Worth Lagoon, Boynton Beach; (5) a site in Lake Wyman, Boca Raton; and (6) a portion of Biscayne Bay Aquatic Preserve.

As stated earlier, the COE requested formal conference with NMFS when the species was proposed for listing in order to address and plan for the maintenance dredging projects. The NMFS' CO, issued September 1, 1998, concluded that the maintenance dredging of the ICW and ports in the range of Johnson's seagrass is not likely to jeopardize the continued existence of the species, and is not likely to destroy or adversely modify its proposed critical habitat. Johnson's seagrass is known to occur in parts of the ICW, but the exclusion of the ICW channel in the designated area will not affect NMFS' ability to review and prohibit adverse impacts to the species. The CO contains pre-dredging survey guidelines which provide that the number and severity of impacts to the species be tracked over time in conjunction with other impacts affecting the species in its range. New dredging or expansion projects will be reviewed separately under section 7.

5. Exclusion of Other Project Types or Areas

Some commenters requested exclusion of other project types or areas besides that of the ICW channel, including: (a) the ICW right-of-way in addition to the channel; (b) all Florida Department of Transportation right-of-way and Submerged Land Easements which encompass existing bridges; (c) current docks, canals, and areas requiring dredging and boat use; (d) public boat ramps and existing basins; (e) any access channels and public and private maintenance of existing channels and piers and docking facilities; (f) public navigation channels; (g) areas adjacent to the Town of Jupiter; (h) Sealine Marina Yachting Center basin; (i) clean-up dredging of the Miami River. One commenter recommended exclusion of: (1) a 500-ft. (152.4 m) buffer adjacent to all privately-owned uplands, (2) the ICW and its adjacent right-of-way, (3) all areas within the preempted area of State submerged land leases, easements, consents of use or other State proprietary authorizations, (4) all marina facilities in existence at the time of listing, and (5) all existing access channels.

Response: The ICW channel has been excluded from critical habitat since it involves ongoing maintenance of a disturbed area. The CO developed for these ICW and ports maintenance projects analyzed the impacts of these activities on Johnson's seagrass. The CO did not consider new ICW dredging or expansion projects involving deepening or widening of the right-of-way. Because of the additional adverse impacts these projects will have on the species and habitat, above those considered in the CO, these projects will be considered separately in the ESA section 7 process. With regard to other areas, the critical habitat designation may be revised in the future as data become available. Critical habitat designation should have no effect on currently existing structures such as docks, marinas, and basins in designated critical habitat unless Federal authorization is required. NMFS would review, at that time, any proposed changes to those structures or facilities. In Biscayne Bay, the Miami River, the Little River, and the Oleta River are excluded from Johnson's seagrass critical habitat beyond its mouth. Any proposed dredging projects of this river that are authorized, funded, or carried out by a Federal agency may be reviewed under the section 7 process for impacts to listed species under NMFS purview.

6. Submerged Land Lease Holding

One commenter, representing a private party holding the lease to submerged lands included in critical habitat designation, questioned how this party would be compensated for loss of this land.

Response: The land designated as critical habitat is not a taking of private property. A critical habitat designation does not impose any additional burdens on private property rights than those imposed by the species listing. A private landowner continues to be free to use his land as he sees fit, using care that his land management does not violate any ESA 4(d) regulations. The critical habitat designation simply clarifies the areas within which one's activity may impact Johnson's seagrass. The designation may affect such property if there is a Federal action that triggers the section 7 process.

7. Biscayne Bay Comments

There were numerous comments on the size of Biscayne Bay compared to the other areas proposed for designation in the north and central part of its range. Some commenters supported the designation. Comments opposed to the size of the designation included: (a) the area should not be so big because it is highly industrialized, with heavy commerce and recreational boating and development; (b) the area is too large as most of it is already dredged and seawalled; (c) the size of the area is not scientifically supported and is overreaching; and (d) the designation will stall and frustrate the orderly expansion of facilities to support recreation in the Bay. Those in support of the designation believed it to be beneficial to the species where the risk of development is great. One commenter suggested a more focused approach in Biscayne Bay Aquatic Preserve.

Response: NMFS believes that this designation, based upon criteria for Johnson's seagrass critical habitat, is currently appropriate and necessary for the survival of Johnson's seagrass in its southern range. Based on comments received, this critical habitat area was re-evaluated by NMFS and by members of the Recovery Team.

The species, by nature, is patchily distributed. Johnson's seagrass occurs in approximately a 2-percent abundance in comparison to all species of seagrass throughout its range. In Biscayne Bay, a highly-impacted system, Johnson's seagrass is not known to occur in the same abundance or to be as widely distributed as in areas of its northern and middle range. Larger seagrasses, predominantly *Thalassia*, begin to out-compete Johnson's seagrass in this area. Eiseman and McMillan (1980) documented Johnson's seagrass in the vicinity of Virginia Key, Key Biscayne (Lat 25°45′); this location is considered to be the southern limit of the species range. There have been no reports of this species further south of the currently known southern distribution.

The presence of Johnson's seagrass in northern Biscayne Bay (north of Virginia Key) is well documented. In addition to localized surveys, the presence of Johnson's seagrass has been documented by various field experiences and observations of the area by Federal, state and county entities. Johnson's seagrass has been documented in various COE and USCG permit applications reviewed by NMFS. The Dade County Department of Environmental Resources has mapped a general seagrass coverage of Biscayne Bay, and a wide-range, long-term monitoring program for Johnson's seagrass is recommended.

Development, man-made impacts, and human use of the submerged lands in this waterbody are heavy and there is a management need to protect critical habitat for Johnson's seagrass based on this pressure. Protection of the northern and southern ranges of the species is identified as a criteria essential to the protection of Johnson's seagrass. Genetic diversity in its southern range may be

greater than in the north or central parts of the range and unique from either the north or central range. The unique phenotypic and genotypic characteristics of these populations could be an important reservoir for characteristics resistant to extinction and conducive to survival and growth.

The State of Florida designated Biscayne Bay as an aquatic preserve, recognizing it as ''an exceptional area of submerged bay lands and natural waterways tidally connected to the bay'' (Florida Administrative Code 18–18). Concurrently, the section of Biscayne Bay Aquatic Preserve designated as critical habitat for Johnson's seagrass is considered by NMFS to be essential to the survival of the species. Final critical habitat designation may be revised as new data become available. New information, possibly through a long-term, wide-range monitoring program and increased ground-truthing of seagrass species in the Bay, could identify the distribution, abundance, and persistence of Johnson's seagrass. This new information could allow NMFS, in the future, to further refine areas in the southern end of the species' range. The species may not occur in 100 percent of the area. However, protection of Johnson's seagrass throughout this area is considered by NMFS to be essential to the conservation and survival of the species.

8. Additional Areas Recommended For Critical Habitat Designation

Various parties recommended the increase in the size and/or the addition of sites in the north and central parts of the range. Commenters believed that the modest acreage proposed, representing only about 7 percent of the species' range, does not fully represent the area occupied by the respective beds over time. The following areas were recommended for expansion: (a) Sebastian Inlet, (b) Fort Pierce Inlet, (c) Jupiter Inlet, (d) Jupiter Sound, (e) Lake Worth/Bingham Island, and (f) Lake Wyman.

The following new areas were recommended to be added as new critical habitat: (a) The entire area of Indian River Lagoon, from Ft. Pierce Inlet to St. Lucie Inlet; (b) Herman's Bay, St. Lucie County; (c) three sites in the Loxahatchee River/Estuary; (d) a site south of Lake Worth Inlet and Peanut Island; (e) a site at Royal Park Bridge, Palm Beach County; (f) two sites south of Boynton Inlet; and (g) site(s) in Broward County. A few commenters believed that the 10-year persistence criterion eliminates significant populations from critical habitat consideration, and that it is too strict. They recommended reduction in the time frame to 3 years to identify a persistent population of Johnson's seagrass.

Response: Five criteria for designating Johnson's seagrass critical habitat were developed by the members of the recovery team (See Critical Habitat for Johnson's seagrass). The size of the areas in the north and central part of the species range were based on the criteria for persistent and flowering populations and indicate the shoals of persistent beds. These areas have been studied for 10 years and have shown the ability to persist where other areas in the general vicinity have not. Johnson's seagrass is patchily distributed, has rapid growth and turnover, and migrates across the sea floor. Recruitment from fragmentation and migration are random processes which do not guarantee the persistence of the species in any one location. The areas designated in Indian River Lagoon, Hobe Sound, Jupiter Inlet, and Lake Worth Lagoon indicate populations that have persisted and flowered for 10 years despite these species characteristics. Environmental characteristics of these sites appear favorable to the species, while in other locations in the lagoon, populations have disappeared. Based upon the Recovery Team recommendations, NMFS believes that 10-year persistence is a valid criterion for designating critical habitat for Johnson's seagrass. Refinement of these areas was possible due to the information from permanent transects, genetic information, State of Florida marina siting and dock shading studies, and Palm Beach County Lake Worth Lagoon surveys.

The Lake Wyman site is a critical area for the existing genetic variability of Johnson's seagrass found in the central part of its range. With a re-examination and further interpretation from Florida Fish and Wildlife Conservation Commission's (FFWCC) marina survey and dock shading data, NMFS concurs that the proposed designation of 3.3 acres excluded the contiguous and dense beds of Johnson's seagrass southward. As a result, NMFS has expanded the southern boundary of this area approximately 1500 ft. (457.2 m) in order to more adequately protect this genetic variability in the central range, particularly from stochastic events.

Some of the recommendations to add new areas were based on reducing the criterion for persistence from 10 years to 3 years. However, NMFS believes, based on Recovery Team recommendations, that the 10-year time period most accurately identifies persistent areas of Johnson's seagrass. The Loxahatchee Estuary, just west of the Jupiter Inlet, holds a large monotypic population of Johnson's seagrass. However, historical survey data on the persistence of Johnson's seagrass in this area do not currently exist. Future data on the ability of Johnson's seagrass to persist in this euryhaline (wide range of salinity) environment, with its extreme changes in salinity, may indicate this to be a unique site for Johnson's seagrass. NMFS may, therefore, consider this site as critical habitat in future rulemaking based on its unique environmental characteristics.

Comments were made that there should be more than two areas proposed for critical habitat designation in Lake Worth Lagoon, which is an essential area of abundance for *Halophila* species. Further analysis from FFWCC, and a re-evaluation of the data provided by Palm Beach County and State of Florida marina siting surveys and dock studies, support the addition of a critical habitat site in Lake Worth Lagoon, south of Lake Worth Inlet and Peanut Island. The population of Johnson's seagrass in this area is well-documented as an abundant, persistent (at least 10 years) and flowering population of mixed *Halophila* and monotypic Johnson's seagrass. Any additions or revisions that may be made in the future to this final rule will go through another proposed and final rule process with public input.

9. Protection of All Seagrasses/ ecosystem

Many individuals expressed support for the designation and voiced the need to protect all seagrasses, emphasizing the ecological benefits (such as a nursery/spawning ground) of seagrass conservation, not only for a single species, but for the ecosystem. Many commenters expressed concerns about massive releases of freshwater by the COE from Lake Okechobee and threats to the entire system from development.

Response: NMFS supports efforts and plans to conserve and manage ecosystems and appreciates the role that the ESA can take in protecting those species most threatened or endangered in these systems. NMFS' authority is under the ESA in protecting listed species, and NMFS believes that the ESA section 7 consultation process benefits the protection of other seagrasses and the diversity of the shallow estuarine ecosystem. NMFS appreciates the opportunity to participate in the Lake Worth Lagoon project, Indian River Lagoon Management Plan, Biscayne Bay initiative and the South Florida Ecosystem Restoration Plan.

10. Lack of Scientific Information

A few commenters suggested that critical habitat was not determinable and should not be designated at this time. Reasons given included: (a) a lack of information on how the species propagates; (b) the need for further study on habitat preferences; and (c) a lack of essential information determining the physical and biological features that are essential to the conservation of a given species.

Response: These factors were considered in the decision to list the species. Essential information does exist for Johnson's seagrass, as provided at the time of listing. The range of the species has been delineated and there is a clear understanding of how the species grows and propagates (Kenworthy, 1999, 1997). Since its listing, further information in terms of genetic variability, patch dynamics, persistence and abundance, and transplanting capabilities has been found for Johnson's seagrass. Further studies will be valuable in answering questions about the species' patch and population dynamics, dispersion, and transplanting capabilities. However, NMFS believes that sufficient and conclusive information exists at this time for the designation of critical habitat for Johnson's seagrass.

11. Critical Habitat is Only to be Designated Where Species Physically Occurs

Some commenters interpreted the ESA definition of ''critical habitat'' (section 3 (5)(i); ''The specific areas within the geographic area occupied by the species'') as meaning that critical habitat can only be designated where the species physically occurs.

Response: A species does not have to occupy 100 percent of a critical habitat area. This would be similar to drawing a ''box'' around a plant or animal but not providing it with its requirements for space, population growth, normal behavior, food, or other physiological, nutritional, and reproductive requirements (See Definition of Critical Habitat). NMFS must focus on the primary constituent elements within the designated areas that are essential to the conservation of the species and that may require special management considerations or protection, and not only the space taken up by the species. This final rule designates ''critical habitat'', as defined by the ESA, for Johnson's seagrass.

12. Existing Regulations

Some commenters questioned the current regulations for the protection of seagrass habitat and whether these were not enough to assure the protection of Johnson's seagrass.

Response: This concern was also covered at the time the species was listed. Despite existing Federal and Florida State laws aimed to conserve and protect seagrass habitat, there is a continued and well documented loss of seagrass habitat in the United States. NMFS acknowledges that many portions of the proposed critical habitat for Johnson's seagrass overlap with other special areas, such as the Indian River Lagoon and Biscayne Bay Aquatic Preserves. The critical habitat designation will underscore and strengthen the protective goals of these areas.

Changes to the Proposed Rule

Based on comments and new information received on the proposed rule, NMFS is modifying the proposed critical habitat designation for Johnson's seagrass as follows:

(1) Exclusion of Federal navigation channels of the ICW that occur in critical habitat areas. This includes the following areas: (a) An interior portion of the Indian River Lagoon, north of the St. Lucie Inlet; (b) Hobe Sound; (c) the site in central Lake Worth Lagoon near Bingham Island; (d) a site in Lake Worth Lagoon, Boynton Beach; (e) a site in Lake Wyman, Boca Raton; and the portion of Biscayne Bay designated as critical habitat.

(2) Extension of Lake Wyman critical habitat area by 1500 ft. (457.2 m) south from the proposed area.

(3) Exclusion of the Miami River and Little River beyond their mouths at Biscayne Bay.

Maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat. They do not constitute the definition of the boundaries of critical habitat. Persons must refer to the regulations at 50 CFR 226.213 for the actual boundaries of the designated critical habitat. Figures 1 through 9 illustrate the ten areas being designated as critical habitat for Johnson's seagrass. These maps do not illustrate the exclusion of the ICW channel.

References

The complete citations for the references used in this document are available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

NMFS is designating ten areas in the range of Johnson's seagrass as critical habitat. This designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS to ensure that their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of additional habitat areas in the species' range and/or outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of the action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the critical habitat designation would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

The Assistant Administrator for Fisheries, NOAA, has determined that the designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of Florida. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

In accordance with E.O. 13132, NMFS has prepared the following federalism summary impact statement. When

NMFS issued a proposed rule to designate critical habitat for Johnson's seagrass in 1994, NMFS began consulting with the State of Florida. While the state expressed support for protection of Johnson's seagrass, it also expressed concern over the possible economic impacts of a critical habitat designation. NMFS understands the concerns of the state regarding timely maintenance of state and Federal navigation channels, ports, and inlets, and NMFS' goal is to protect the species with minimal effects to these activities. Concerns regarding possible economic impacts of a critical habitat designation are addressed in the preamble to this final rule. In addition, NMFS has completed a conference opinion with the COE on the effects of maintenance dredging on Johnson's seagrass and its critical habitat. NMFS expects that maintenance dredging will not be negatively impacted by this final critical habitat designation.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: March 30, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 226.213 is added to part 226 to read as follows:

§ 226.213 Critical habitat for Johnson's seagrass.

Critical habitat is designated to include substrate and water in the following ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson's seagrass.

(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′15.03″N, 80°27′55.49″W
Northeast corner: 27°51′16.57″N, 80°27′53.05″W
Southwest corner: 27°51′08.85″N, 80°27′50.48″W
Southeast corner: 27°51′11.58″N, 80°27′47.35″W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′01.32″N, 80°27′46.10″W
Northeast corner: 27°51′02.69″N, 80°27′45.27″W
Southwest corner: 27°50′59.08″N, 80°27′41.84″W
Southeast corner: 27°51′01.07″N, 80°27′40.50″W

(c) A portion of the Indian River Lagoon in the vicinity of the Fort Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northwest corner: 27°28′06.00″N, 80°18′48.89″W
Northeast corner: 27°28′04.43″N, 80°18′42.25″W
Southwest corner: 27°28′02.86″N, 80°18′49.06″W
Southeast corner: 27°28′01.46″N, 80°18′42.42″W

(d) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Nettles Island to the Florida Oceanographic Institute, defined by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):

Northwest corner: 27°16′44.04″N, 80°14′00.00″W
Northeast corner: 27°16′44.04″N, 80°12′51.33″W
Southwest corner: 27°12′49.70″N, 80°11′46.80″W
Southeast corner: 27°12′49.70″N, 80°11′02.50″W

(e) Hobe Sound beginning at State Road 708 (27°03′49.90″N, 80°07′20.57″W) and extending south to 27°00′00.00″N, 80°05′32.54″W and excluding the federally-marked navigation channel of the ICW.

(f) Jupiter Inlet at a site located just west of the entrance to Zeek's Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56′43.34″N, 80°04′47.84″W
Northeast corner: 26°56′40.93″N, 80°04′42.61″W
Southwest corner: 26°56′40.73″N, 80°04′48.65″W
South central point: 26°56′38.11″N, 80°04′45.83″W
Southeast corner: 26°56′38.31″N, 80°04′42.41″W

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°40′44.00″N, 80°02′39.00″W
Northeast corner: 26°40′40.00″N, 80°02′34.00″W
Southwest corner: 26°40′32.00″N, 80°02′44.00″W
Southeast corner: 26°40′33.00″N, 80°02′35.00″W

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°33′28.00″N, 80°02′54.00″W
Northeast corner: 26°33′30.00″N, 80°03′04.00″W
Southwest corner: 26°32′50.00″N, 80°03′11.00″W
Southeast corner: 26°32′50.00″N, 80°02′58.00″W

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°22′27.00″N, 80°04′23.00″W
Northeast corner: 26°22′27.00″N, 80°04′18.00″W
Southwest corner: 26°22′05.00″N, 80°04′16.00″W
Southeast corner: 26°22′05.00″N, 80°04′18.00″W

(j) A portion of Northern Biscayne Bay, Florida, defined by the following: The northern boundary of Biscayne Bay Aquatic Preserve, NE 163rd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18-18.002 of the Florida Administrative Code (F.A.C.) excluding the Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson's seagrass, Central Key Biscayne (25°45′N).

BILLING CODE 3510–22–F

Figure 1

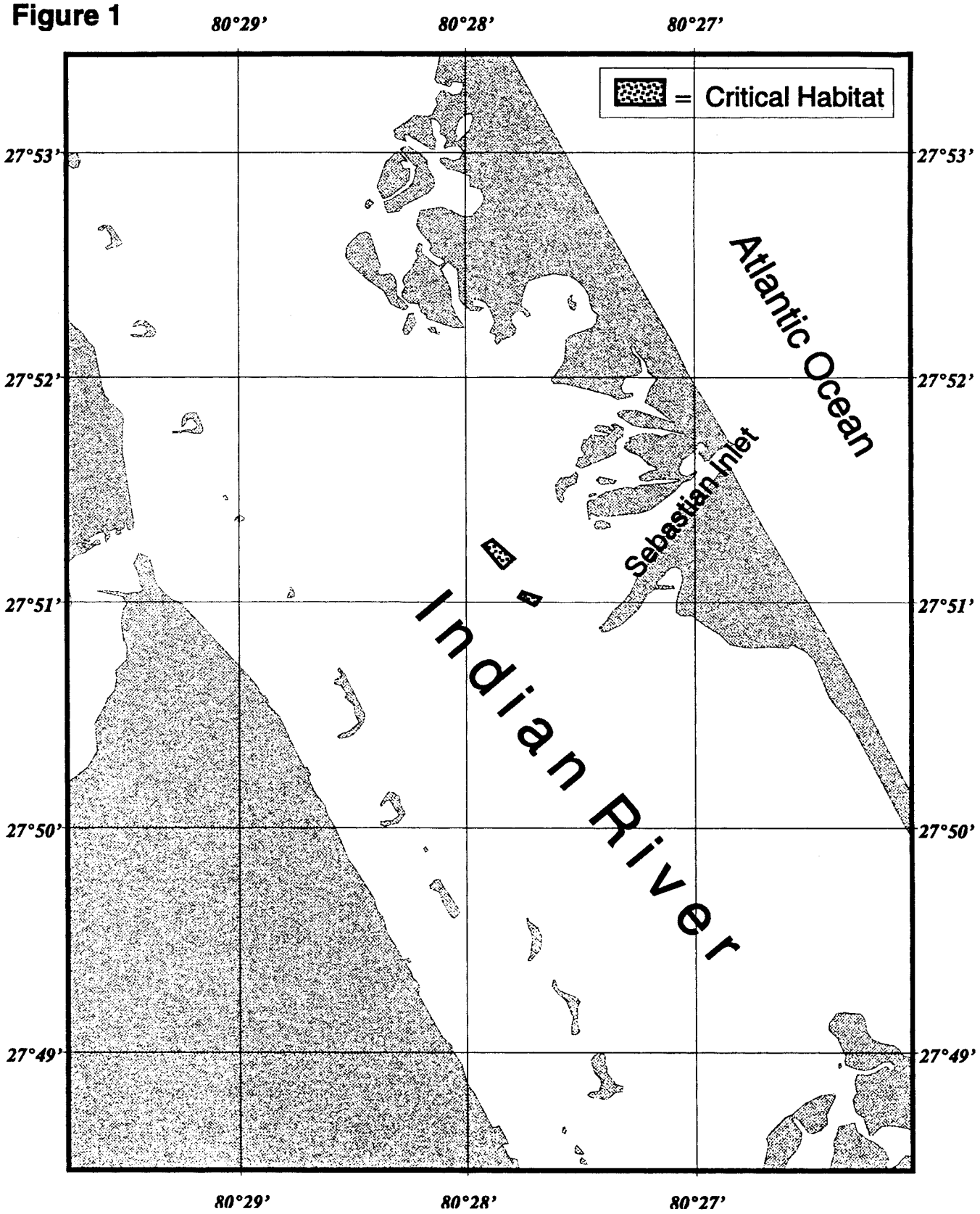

80°29'
80°28'
80°27'
= Critical Habitat
27°53'
27°52'
27°51'
27°50'
27°49'
Atlantic Ocean
Sebastian Inlet
Indian River

Figure 2

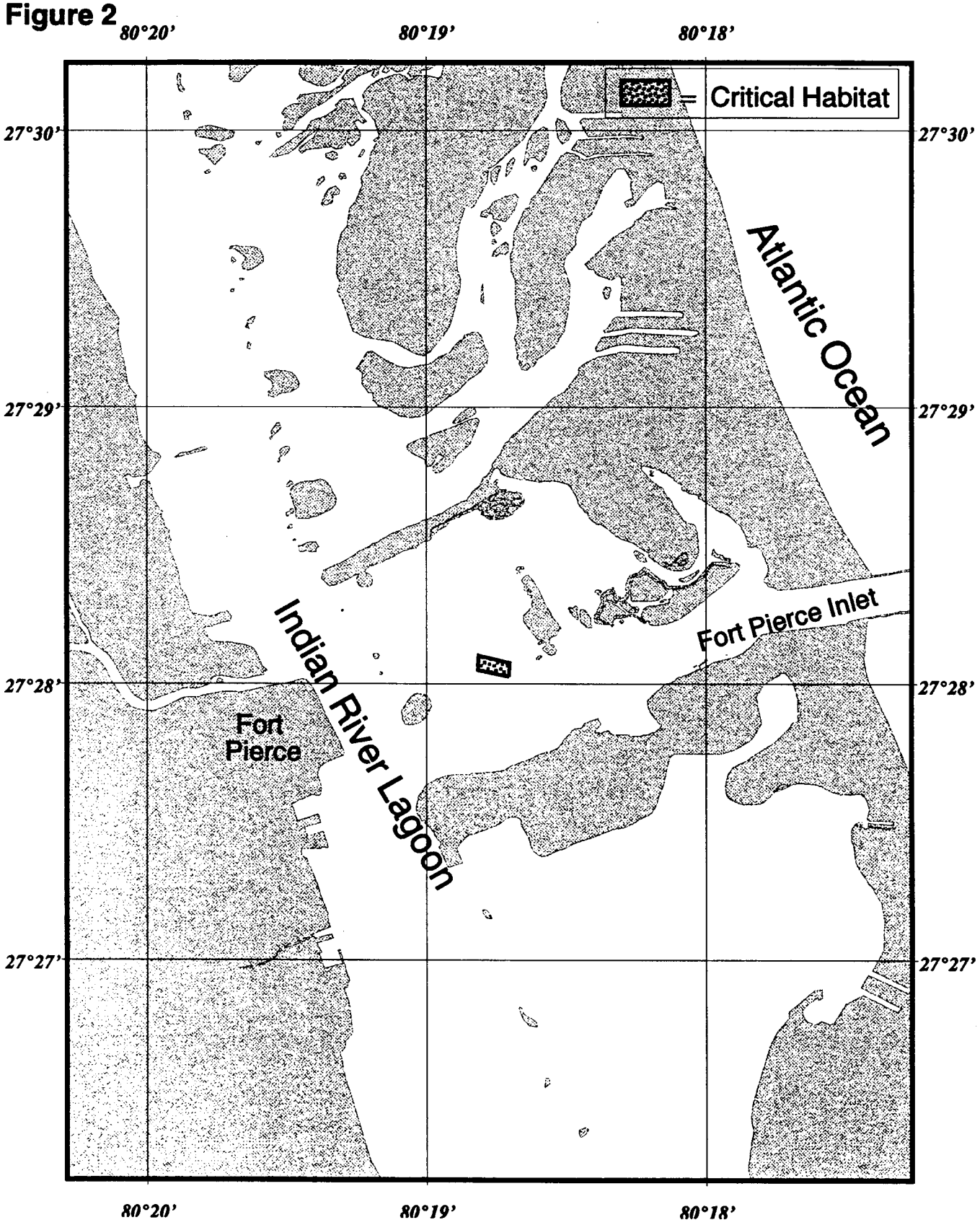

80°20'
80°19'
80°18'
= Critical Habitat
27°30'
27°29'
27°28'
27°27'
Atlantic Ocean
Fort Pierce Inlet
Indian River Lagoon
Fort Pierce
PRA

Figure 3

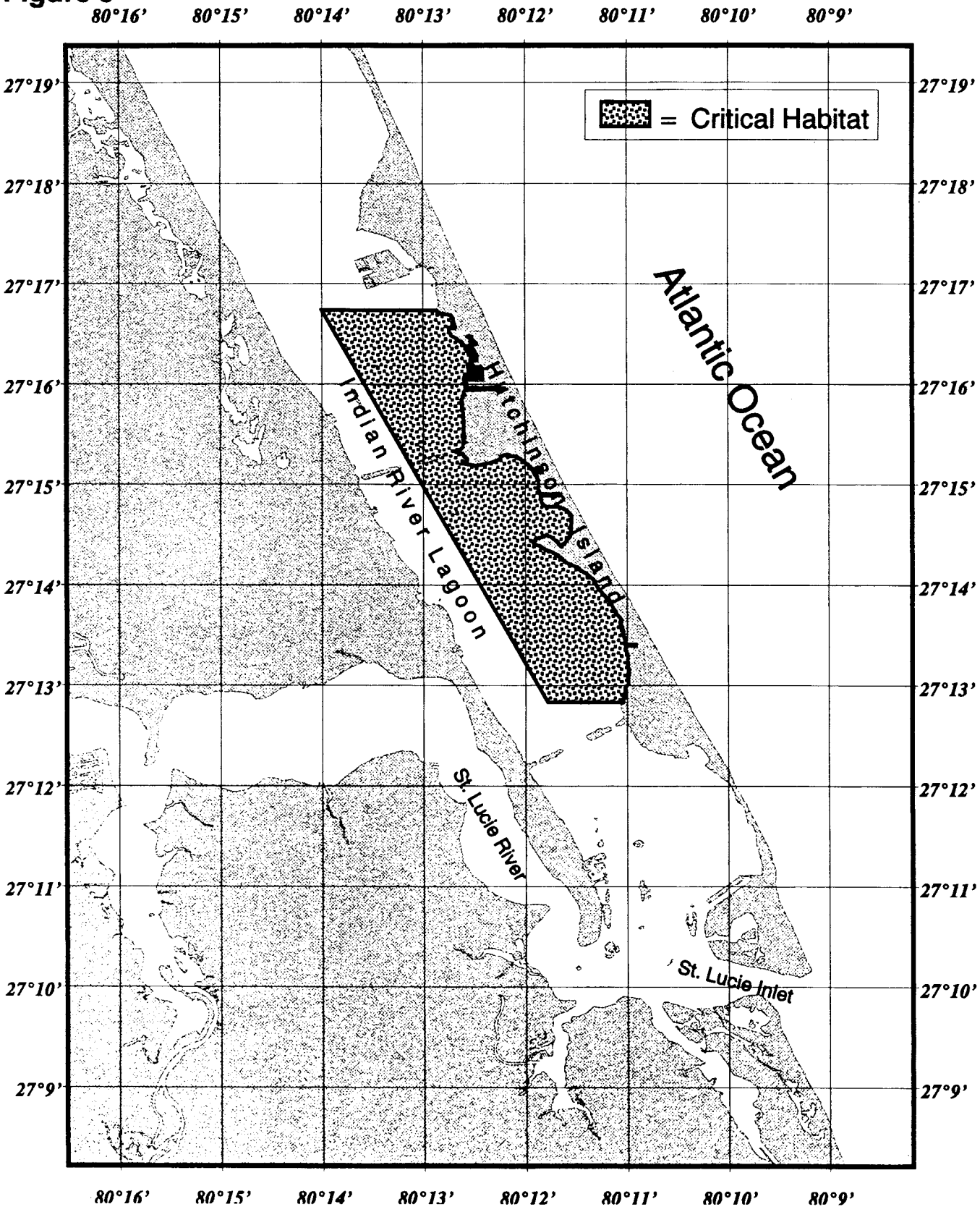

80°16'
80°15'
80°14'
80°13'
80°12'
80°11'
80°10'
80°9'
27°19'
27°18'
27°17'
27°16'
27°15'
27°14'
27°13'
27°12'
27°11'
27°10'
27°9'
= Critical Habitat
Atlantic Ocean
Hutchinson Island
Indian River Lagoon
St. Lucie River
St. Lucie Inlet

Figure 4

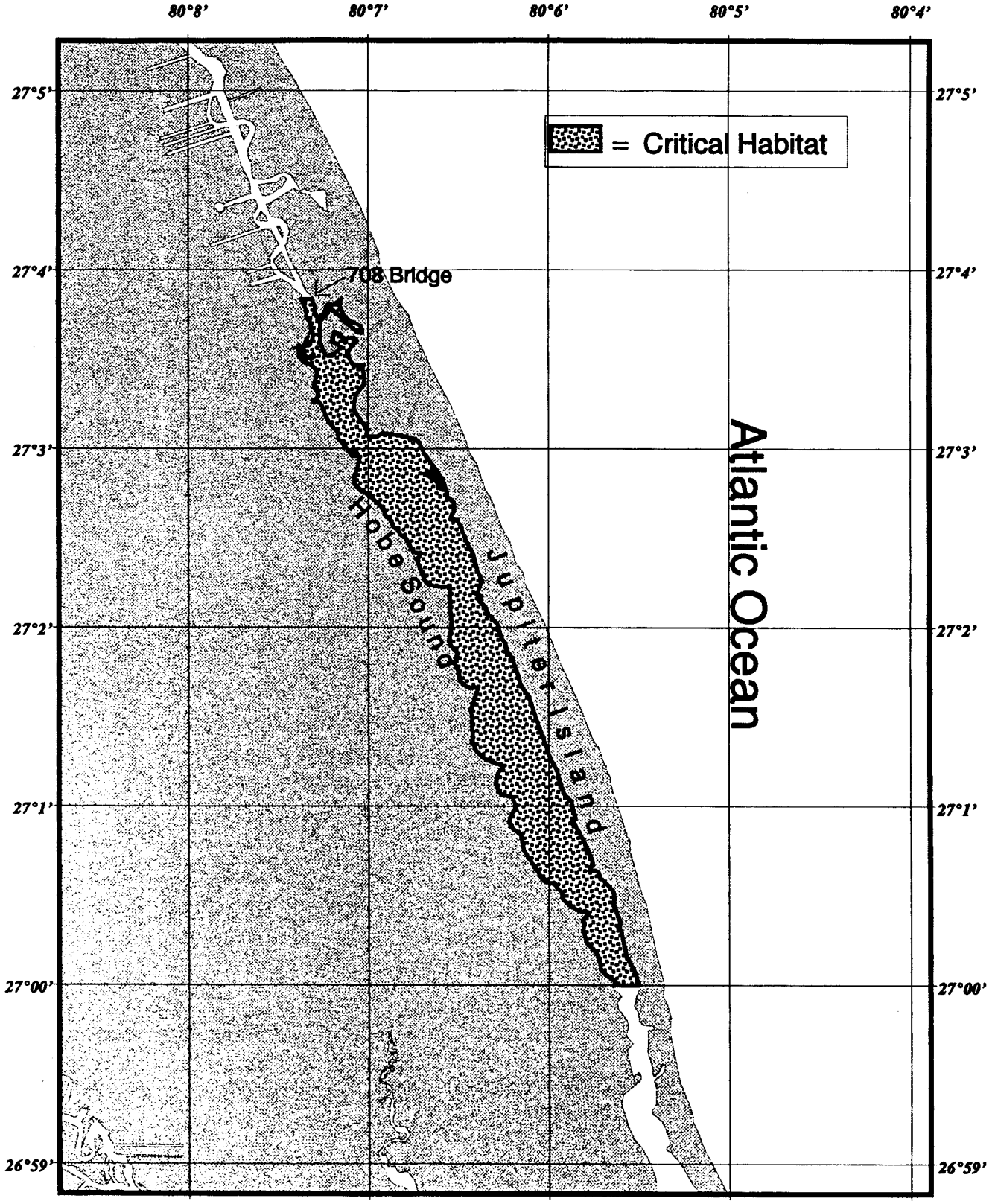

80°8'
80°7'
80°6'
80°5'
80°4'
27°5'
27°4'
27°3'
27°2'
27°1'
27°00'
26°59'
= Critical Habitat
708 Bridge
Hobe Sound
Jupiter Island
Atlantic Ocean

Figure 5

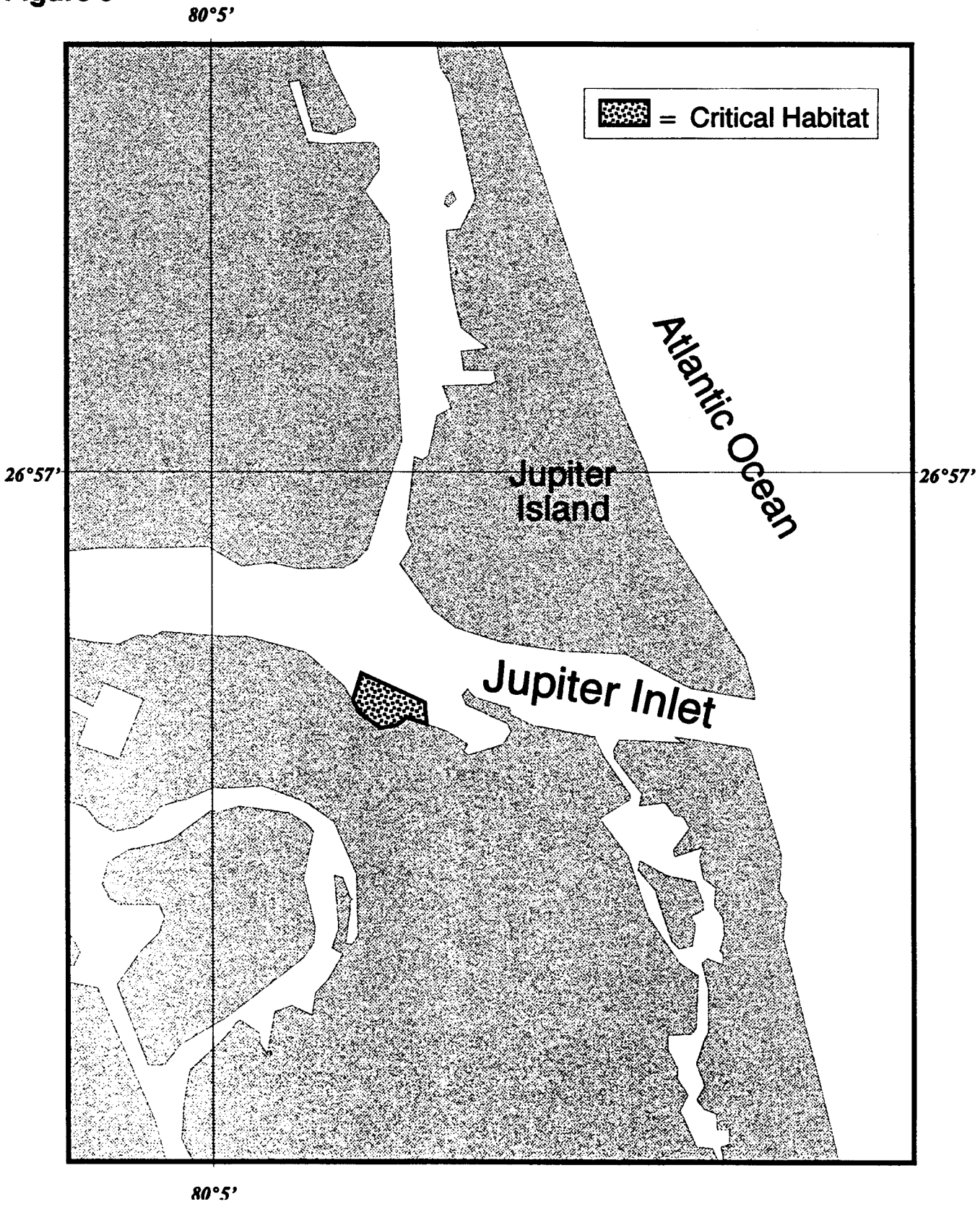

80°5'
= Critical Habitat
Atlantic Ocean
26°57'
Jupiter Island
26°57'
Jupiter Inlet
80°5'

Figure 6

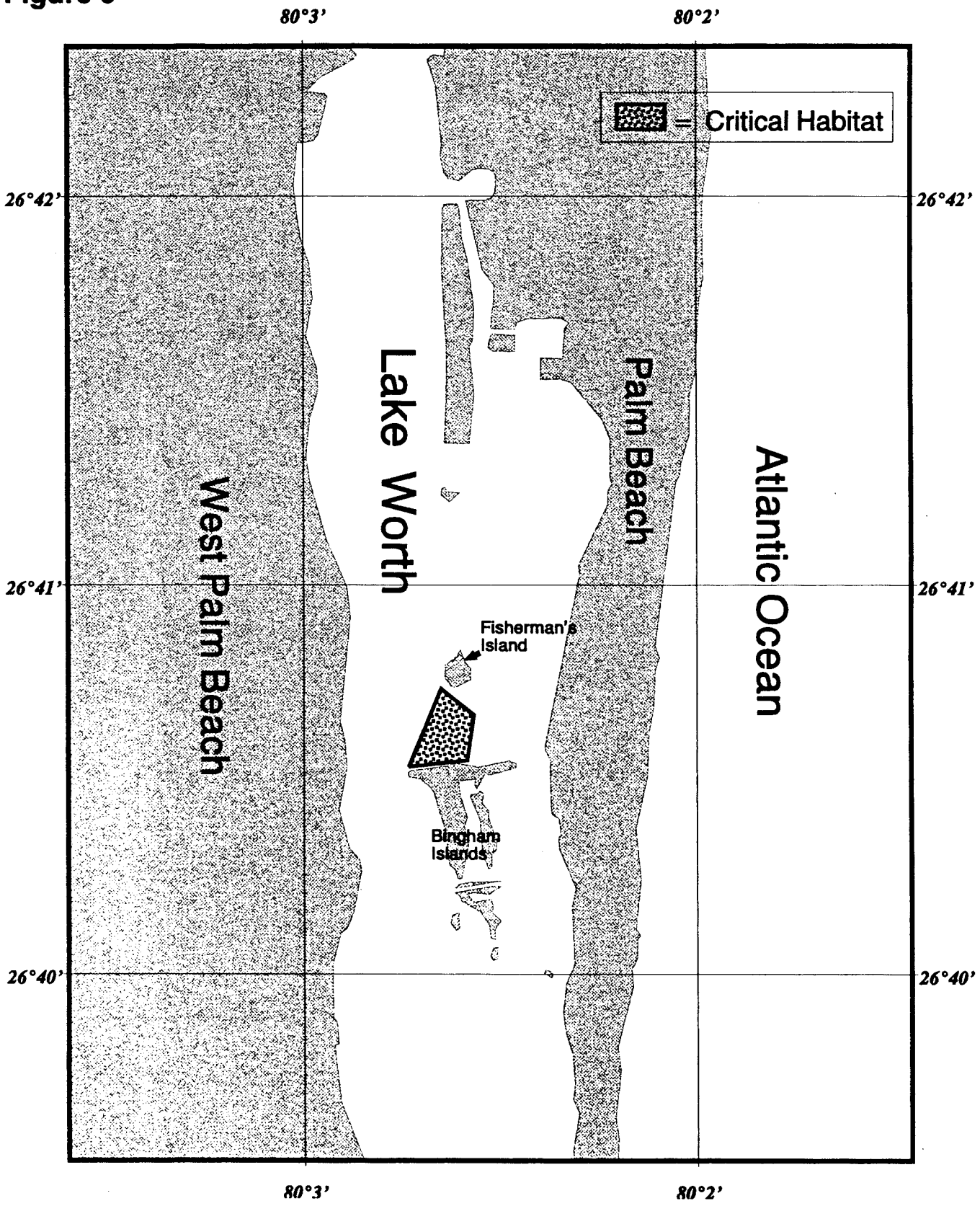

80°3'
80°2'
= Critical Habitat
26°42'
26°41'
26°40'
Lake Worth
Palm Beach
Atlantic Ocean
West Palm Beach
Fisherman's Island
Bingham Islands

Figure 7

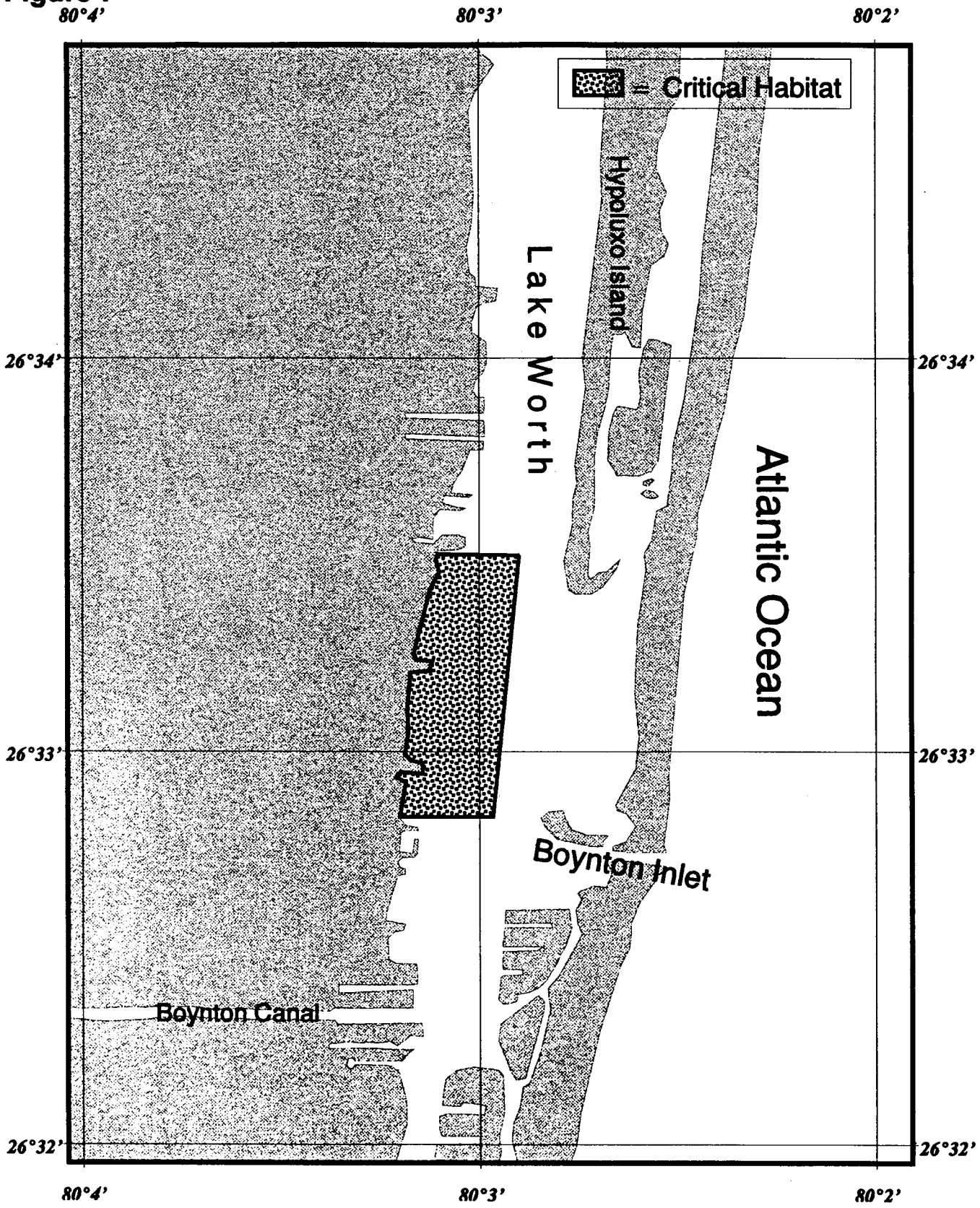

80°4'
80°3'
80°2'
= Critical Habitat
Hypoluxo Island
Lake Worth
Atlantic Ocean
26°34'
26°33'
26°32'
Boynton Inlet
Boynton Canal

Figure 8

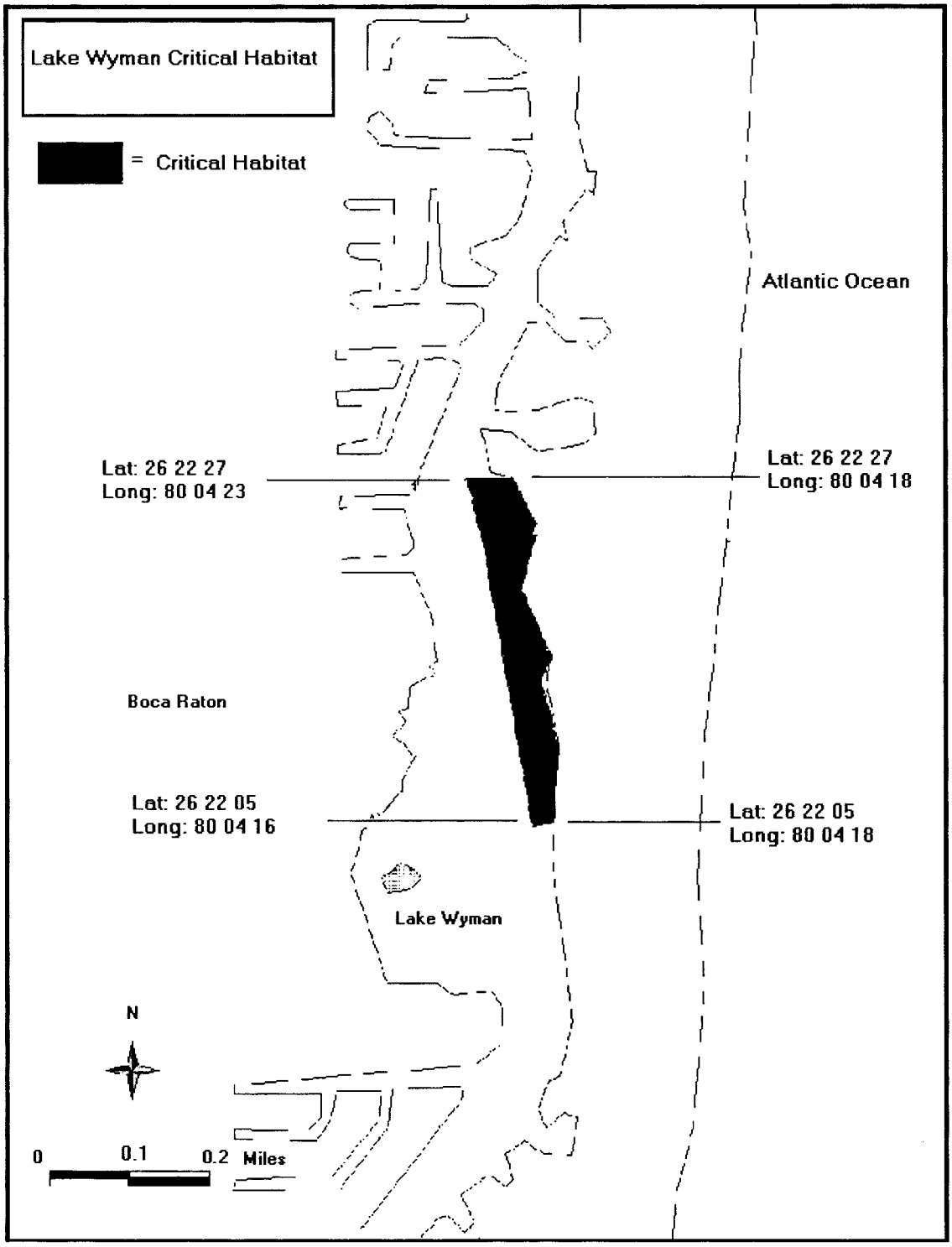
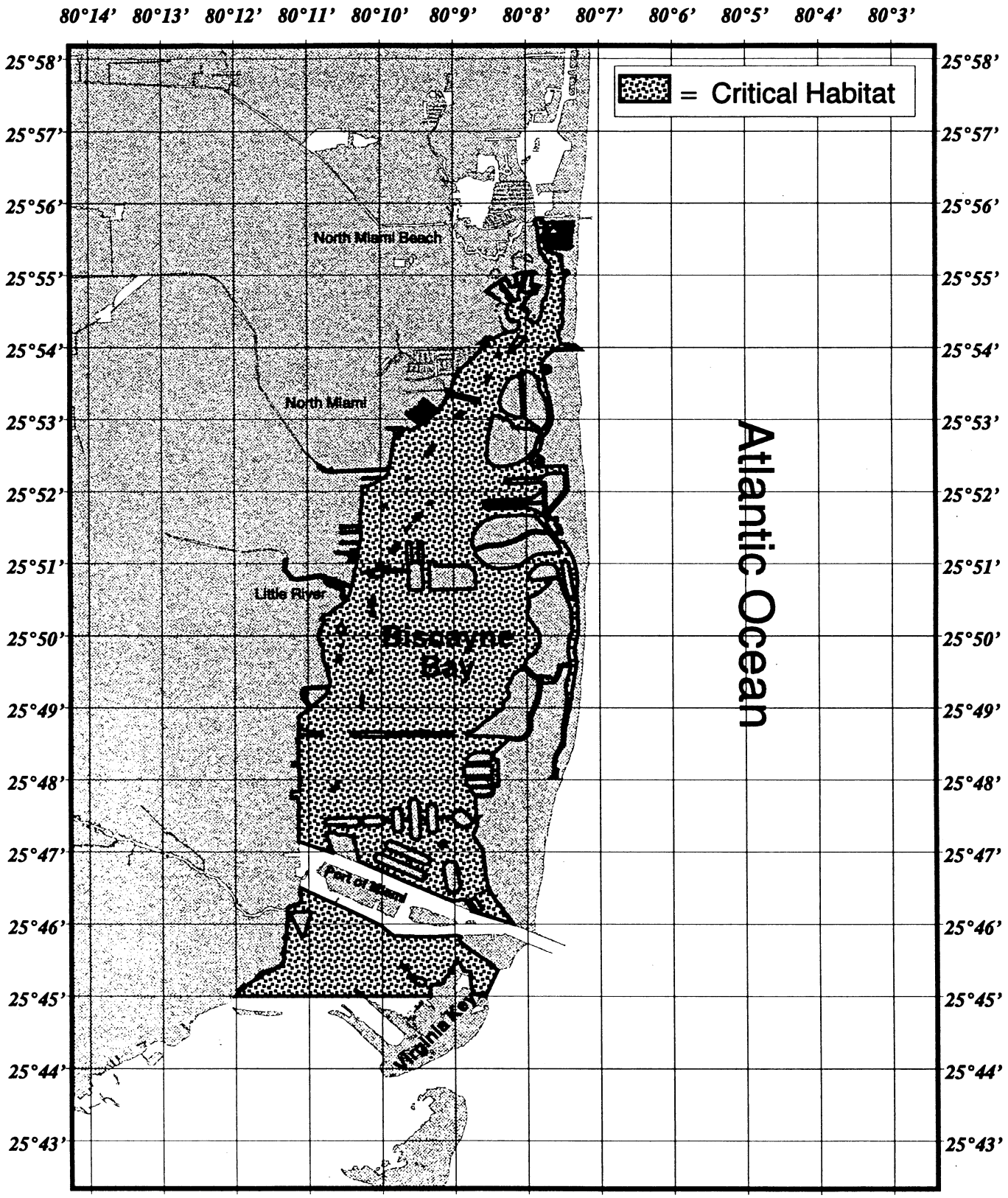

Lake Wyman Critical Habitat
= Critical Habitat
Atlantic Ocean
Lat: 26 22 27
Long: 80 04 23
Lat: 26 22 27
Long: 80 04 18
Boca Raton
Lat: 26 22 05
Long: 80 04 16
Lat: 26 22 05
Long: 80 04 18
Lake Wyman
N
0
0.1
0.2 Miles

Figure 9



[FR Doc. 00–8394 Filed 4–4–00; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991220343–0071–02; I.D. 120999D]

RIN 0648–AM52

Pacific Halibut Fisheries; Catch Sharing Plans; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule, published in the **Federal Register** on March 20, 2000, which contains annual management measures for Pacific halibut fisheries and an approval of catch sharing plans.

DATES: Effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–4345, or Yvonne deReynier, 206–526–6140.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on March 20, 2000 (65 FR 14909), to publish annual management measures on behalf of the International Pacific Halibut Commission and to announce approval of modifications to the Catch Sharing Plan and implementing regulations for Area 2A.

An editorial comment was unintentionally added to the preamble of the final rule, which must be removed.

Correction

In the final rule Pacific Halibut Fisheries; Catch Sharing Plans, published in 65 FR 14909, March 20, 2000, FR Doc 00–6837, on page 14912, in the second column, in paragraph (2), the last two sentences are removed.

Dated: March 30, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8395 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–9347; I.D. 032700D]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to trip limits in the Pacific Coast groundfish open access fishery for vessels using pink shrimp trawl gear, and clarifies restrictions for other exempted trawl gears. These actions, which are authorized by the Pacific Coast groundfish fishery management plan (FMP), are intended to help the fisheries achieve optimum yield (OY).

DATES: Effective 0001 hours local time April 1, 2000, unless modified, superseded or rescinded, until the effective date of the 2001 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through April 20, 2000.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its March 6–10, 2000, meeting in Sacramento, CA. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the annual specifications and management measures for the groundfish fishery, published in the **Federal Register** at 65 FR 221 (January 4, 2000).

At its November 1999 meeting, the Council recommended the following groundfish limits for a vessel using shrimp trawl gear (an open access exempted trawl gear): 500 lb (227 kg) per day (multiplied by the number of days in the fishing trip), not to exceed 2,000 lb (907 kg) per trip. The Council also announced its intent to review and recommend at its March 2000 meeting any additional sublimits that should apply for the pink shrimp fishery which starts April 1, 2000. The groundfish trip limits are intended to provide for a reasonable level of incidental harvest in the pink shrimp fishery: Trip limits that are too high could encourage targeted fishing for groundfish and trip limits that are too low could result in discarding groundfish that exceed the trip limits. At its March 2000 meeting, the Council recommended maintaining the overall groundfish limits announced in January for the pink shrimp trawl fishery, and added the following sublimits that count toward the overall groundfish limits: for canary rockfish—100 lb (45 kg) in April and 300 lb (136 kg) per month May through October, (the same as for limited entry vessels using small-footrope trawl gear); for lingcod—no retention in April, and 400 lb (181 kg) per month in May through October, the same as for limited entry vessels using small-footrope trawl gear, and with a minimum size limit of 24 inches (61 cm) north of 40°10′ N. lat. and 26 inches (66 cm) south of 40°1010′ N. lat., the same size limits as for open access nontrawl gear; for sablefish, 2,000 lb (907 kg) per month, which is smaller than the open access nontrawl or limited entry trawl cumulative limits for sablefish. These limits are based on landings data for the shrimp fishery, and as consistent as practicable with other limits for the groundfish fishery.

The trip limits are complicated by the fact that many vessels that fish for pink shrimp also participate in other groundfish fisheries. Provisions are added in this document to clarify which limits apply if a vessel participates in both pink shrimp and other groundfish fisheries during the same trip limit period. If a vessel that takes and retains pink shrimp also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative trip limit period, the vessel may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with

that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery. Minor housekeeping revisions also are made to clarify which trip limits apply to the other exempted trawl gears.

The Council remains concerned about the amount of canary rockfish, an overfished species, that may be taken incidentally in the pink shrimp fishery and will reconsider this issue at its April meeting.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as modified). The annual management measures are modified as follows:

In Section IV, paragraphs IV.A.(11), C.(1), the title of Table 5, C.(2), C.(2)(a), and C.(3) are revised to read as follows:

IV. NMFS Actions

* * * * *

A. General Definitions and Provisions

* * * * *

(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. Special provisions that apply to a vessel using exempted trawl gear to fish for pink shrimp are found at paragraph C.(3)(d).

* * * * *

C. Trip Limits in the Open Access Fishery

* * * * *

(1) *All open access gear.* The trip limits, size limits, seasons, and other management measures for open access groundfish gear, except exempted trawl gear engaged in fishing for pink shrimp, are listed in Table 5. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.(4).) Additional limits for exempted trawl gears are found in paragraphs IV.C.(2) and (3).

* * * * *

''Table 5. 2000 Trip Limits 1/ for All Open Access Gear except Exempted Trawl Gear Engaged in Fishing for Pink Shrimp''.

* * * * *

(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers.*

(a) *Trip limits.* The trip limit is 300 lb (136 kg) of groundfish per fishing trip. Limits and closures in Table 5 also apply and are counted toward the 300-lb (136-kg) groundfish limit. In any landing by a vessel engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (*Squalas acanthias*) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300-lb (136-kg) per trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception, and the overall groundfish ''per trip'' limit may not be multiplied by the number of days of the fishing trip.

* * * * *

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* (a) Starting April 1, 2000, the trip limit is 500 lb (227 kg) of groundfish per day, multiplied by the number of days of the fishing trip, but not to exceed 2,000 lb (907 kg) of groundfish per trip. The following sublimits also apply and are counted toward the overall 500-lb (227 kg) per day and 2,000-lb (907 kg) per trip groundfish limits:

(i) Canary rockfish—

(A) April 1–30, 2000: 100 lb (45 kg) per month

(B) Starting May 1, 2000: 300 lb (136 kg) per month

(ii) Lingcod—

(A) April 1–30, 2000: closed.

(B) Starting May 1, 2000: 400 lb (181 kg) per month, with a minimum size limit (total length) of 24 inches (61 cm) north of 40°10′ N. lat. and 26 inches (66 cm) south of 40°10′ N. lat.

(iii) Sablefish—Starting April 1, 2000: 2,000 lb (907 kg) per month;

(iv) Thornyheads—closed north of Pt. Conception (34°27′ N. lat.)

(b) The trip limits in Table 5 do not apply to groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.

(c) In any trip in which pink shrimp trawl gear is used, the amount of groundfish landed may not exceed the amount of pink shrimp landed.

(d) *Operating in pink shrimp and other fisheries during the same cumulative trip limit period.* If a vessel that takes and retains pink shrimp also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative trip limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), the vessel may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery. (The provisions at IV.A.(11) do not apply.)

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impractical. It would be impractical because the pink shrimp fishery begins April 1, 2000, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), because such a delay would be contrary to the public interest. This action should be implemented at the beginning of a cumulative trip limit period to avoid confusion and reduce the potential that fishers will exceed the appropriate limits. For these reasons good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

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

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8376 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 032700A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Renewal of Exempted Fishing Permit

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

ACTION: Renewal of Exempted Fishing Permits (EFPs) for monitoring incidental catch of salmon and groundfish in the Washington-Oregon-California (WOC) shore-based Pacific whiting fishery.

SUMMARY: NMFS announces the receipt of an application, and NMFS' intent to renew EFPs for vessels participating in an observation program to monitor the incidental take of salmon and groundfish in the shore-based component of the Pacific whiting fishery. These EFPs are necessary to allow trawl vessels fishing for Pacific whiting to delay sorting their catch, and thus to retain prohibited species and groundfish in excess of cumulative trip limits until the point of offloading. These activities are otherwise prohibited by Federal regulations.

DATES: The EFPs will be effective no earlier than April 1, 2000, and would expire no later than May 31, 2001, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

ADDRESSES: Copies of the EFP are available from Becky Renko or Katherine King Northwest Region, NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Katherine King 206–526–6140.

SUPPLEMENTARY INFORMATION: This action is authorized by Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745 which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited.

NMFS received an application requesting renewal of these EFPs from the States of Washington, Oregon, and California at the March 6–10, 2000, Pacific Fishery Management Council (Council) meeting in Sacramento California. An opportunity for public testimony was provided during the Council meeting. The Council recommended that NMFS issue the EFPs, as requested by the States.

Renewal of these EFPs, to about 40 vessels, would continue an ongoing program to collect information on the incidental catch of salmon and groundfish in whiting harvests delivered to shoreside processing facilities by domestic trawl vessels operating off WOC. Because whiting deteriorates rapidly, it must be handled quickly and immediately chilled to maintain the quality. As a result, many vessels dump catch directly or near directly into the hold and are unable to effectively sort their catch.

The issuance of EFPs will allow vessels to delay sorting of prohibited species and groundfish caught in excess of cumulative trip limits until offloading. Delaying sorting until the vessel offloads will allow state biologists to collect incidental catch data for total catch estimates while maintaining whiting quality. Without an EFP, groundfish regulations at 50 CFR 660.306(b) require vessels to sort out prohibited species and return them to sea as soon as practicable with minimum injury. To allow state biologists to sample unsorted whiting, it is also necessary to include provisions for potential overages of groundfish trip limits which would be otherwise prohibited by regulations at 50 CFR 660.306(h).

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

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8380 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990430113–913–01; I.D. 032700C]

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments From Cape Falcon to Humbug Mountain, OR

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

ACTION: Inseason adjustments; request for comments.

SUMMARY: NMFS announces that the commercial and recreational fisheries for all salmon except coho, in the areas from Cape Falcon to Humbug Mountain, OR, will open April 1, 2000, and continue through dates to be determined in the 2000 management measures for 2000 ocean salmon fisheries in the U.S. exclusive economic zone (EEZ). This action is necessary to conform to the 1999 announcement of management measures for year 2000 salmon seasons opening earlier than May 1, 2000, and is intended to ensure conservation of chinook salmon.

DATES: Effective April 1, 2000, until the effective date of the year 2000 management measures, which will be published in the **Federal Register** for the west coast salmon fisheries. Comments will be accepted through April 20, 2000.

ADDRESSES: Comments on this action must be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rodney McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140, or Svein Fougner, 562–980–4030.

SUPPLEMENTARY INFORMATION: In the 1999 annual management measures for ocean salmon fisheries (64 FR 24078,

May 5, 1999), NMFS announced that the Pacific Fishery Management Council (Council) would consider at its March 2000 meeting a recommendation to open commercial and recreational seasons for all salmon except coho in areas off Oregon. Due to the timing of the March and April Council meetings, where the major 2000 salmon seasons are developed, this action is necessary to implement the opening of these seasons prior to May 1, 2000. In the 1999 management measures for 2000 ocean salmon fisheries, NMFS announced that the recreational fishery would not open until May 1, 2000, between Cape Falcon and Humbug Mountain, OR, for all salmon except coho, unless opened following an inseason recommendation of the Council at the March 2000 meeting. In addition, the Council may also consider inseason modifications to open or modify commercial fisheries off Oregon for all salmon except coho, prior to May 1, 2000.

At the March 2000 meeting, the Council made its inseason recommendations to open the recreational and commercial fisheries, for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, on April 1, 2000. The closing dates for both fisheries will be determined at the April 2000 meeting when the entire 2000 management measures for the 2000 ocean salmon fisheries are finalized.

The recreational fishery for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, opens on April 1, 2000. The daily possession limit is two fish per day, with no more than six fish retained in 7 consecutive days. The minimum size limit is 20 inches (50.8 cm). Allowed gear is artificial lures and plugs of any size, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than two single-point, single-shank, barbless hooks. Divers are prohibited and flashers may only be used with downriggers. Oregon State regulations describe a closure at the mouth of Tillamook Bay.

The commercial fishery for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, opens on April 1, 2000. No more than four spreads are allowed per line. The minimum size limit is 26 inches (66.0 cm) (19.5 in (49.5 cm) head-off). Chinook not less than 26 inches (66.0 cm) (19.5 inches (49.5 cm) head-off) taken during open seasons south of Cape Falcon may be landed north of Cape Falcon only while the season is closed north of Cape Falcon. Oregon state regulations describe a closure at the mouth of Tillamook Bay.

The Regional Administrator consulted with representatives of the Council, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and the California Department Fish and Game regarding these adjustments. As provided by the inseason notification procedures at 50 CFR 660.411, actual notice to fishermen of these actions will be given prior to 0001 hours local time, April 1, 2000, by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Because of the need for immediate action, NMFS has determined that good cause exists for this document to be issued without affording a prior opportunity for public comment. This document does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8385 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 033100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District in the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in the West Yakutat District in the Gulf of Alaska (GOA). This action is necessary to fully utilize the 2000 total allowable catch (TAC) of pollock.

DATES: Effective 1200 hrs, Alaska local time, April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the pollock TAC for 2000 in the West Yakutat District of the GOA is 2,340 metric tons (mt) under the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000).

NMFS closed the directed fishery for pollock in the West Yakutat District of the GOA under § 679.20(d)(1)(iii) on March 28, 2000 (65 FR 17205, March 31, 2000).

NMFS has determined that currently, approximately 600 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in the West Yakutat District of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the pollock TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to 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 required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: March 31, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8372 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 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

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV00–984–1 PR]

Walnuts Grown in California; Report Regarding Interhandler Transfers of Walnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations of the Federal marketing order for California walnuts (order) regarding reports of interhandler transfers of walnuts. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule would require handlers to report such interhandler transfers on a separate form. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments.

DATES: Comments must be received by June 5, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This proposed rule invites comments on revising the order's administrative rules and regulations regarding reports of interhandler transfers of walnuts. Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule would require handlers to report such interhandler transfers on a separate form. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. This action was unanimously recommended by the Board at a meeting on February 18, 2000.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

Section 984.59 of the order provides authority for handlers to transfer walnuts between handlers. Paragraph (a) of that section states that inshell walnuts may be sold or delivered by one handler to another for packing or shelling within California. In such cases, the receiving handler assumes marketing order obligations with respect to the transferred walnuts, including assessment and inspection requirements. Paragraph (b) of § 984.59 pertains to transfers of walnuts when volume regulation is in effect. Specifically, handlers may, for purposes of meeting their reserve obligation, acquire walnuts from other handlers. In such cases, the buying handler assumes marketing order obligations with respect to the transferred walnuts, including assessment, reserve, and inspection

requirements. Paragraph (c) of § 984.59 provides that, with the exceptions stated in paragraphs (a) and (b) of § 984.59, whenever transfers of walnuts are made between handlers, the first handler thereof shall assume all marketing order obligations pertaining to the walnuts.

Currently, handlers are required to report interhandler transfers on monthly shipment reports, WMB Form No. 6. However, the monthly shipment reports do not require handlers to indicate the date the walnuts were transferred, and whether the transferred walnuts were certified by the Dried Fruit Association (DFA). The agency designated under the order to provide inspection services for handlers. Also, the reports do not indicate the date the walnuts were received by the handler accepting the walnuts, or include a confirmation by the accepting handler that such walnuts were received. This information on transfers would be useful to the Board as it reconciles handler shipments and inventories.

The Board recommended that a new form be developed specific to interhandler transfers. A handler who transferred walnuts to another handler would have to complete and submit WMB Form No. 8 to the Board within 10-calendar days following the transfer. The report would have the following information: (1) The date of the transfer; (2) the net weight, in pounds, of the walnuts transferred; (3) whether such walnuts were certified by the DFA; (4) whether such walnuts were inshell or shelled; (5) the name and address of the transferring handler; and (6) the name and address of the receiving handler. The transferring handler would be required to send two copies of the report to the receiving handler at the same time the transferring handler would submit the report to the Board. The receiving handler would then certify, on one copy of the report, that he or she received the walnuts. The receiving handler would then submit the report to the Board within 10-calendar days after the walnuts, or copies of the report, have been received, whichever is later. Transfers of reserve walnuts during periods of volume regulation would continue to be reported on WMB Form No. 17.

This rule would provide the Board with more accurate and complete information regarding handler transfers and shipments of walnuts, thereby facilitating program administration. Accordingly, a new § 984.459 is proposed to be added to the order's administrative rules and regulations.

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

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

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1998–99 season, as a percentage, 24 percent of the handlers shipped over 2.6 million kernelweight pounds of walnuts, and 76 percent of the handlers shipped under 2.6 million kernelweight pounds of walnuts. Based on an average price of $1.88 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would add a new § 984.459 to the order's administrative rules and regulations which would require handlers to report transfers of walnuts between handlers on a separate form. Currently, interhandler transfers are reported on handlers' monthly shipment reports. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. Authority for requiring handlers to submit this information to the Board is provided in §§ 984.59 and 984.76 of the order.

Regarding the impact of the proposed action on affected entities, this rule would impose a minimal, additional reporting burden on handlers who transfer walnuts. Handlers who transfer walnuts are already reporting transfers to the Board on monthly shipment reports. This action would require such handlers to report transfers on a separate form. Board staff estimates that there are about 25 interhandler transfers per year (20 total during the months of October, November, and December, and 0–1 during the other 9 months). This action is designed to provide the Board with more accurate and complete information on shipments and transfers which would facilitate program administration.

Regarding alternatives to the recommended action, the Board and industry members discussed at the Board's February 18, 2000, meeting different time frames for the submission of the separate, interhandler transfer report. A 5-day time frame was considered whereby transferring handlers would submit their report to the Board within 5 days of the transfer, and the receiving handler would submit their report within 5 days of receiving the walnuts. However, the Board believed that 5 days was too short a time frame for handlers, and recommended the 10-day time frame.

This action would impose some additional reporting and recordkeeping burden on handlers. As previously mentioned, it is estimated that there are about 25 interhandler transfers per year. It would take handlers about 10 minutes to complete the new form for a total industry burden of about 4 hours per year. With interhandler transfers no longer on monthly shipment reports, the burden for handlers to complete the monthly shipment report would be reduced from 15 to 10 minutes per report, or from a total of 3 to 2 hours per year. Thus, the total annual increase in burden for the industry is estimated at 3 hours. The revised shipment report and the new, interhandler transfer report have been submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Board's meeting on February 18, 2000, where this action was deliberated was a public meeting

In addition, the Board's meeting on February 18, 2000, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. All interested persons were invited to attend the meeting and participate in the Board's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 984.459 is added to read as follows:

§ 984.459 Reports of interhandler transfers.

(a) Any handler who transfers walnuts to another handler within the State of California shall submit to the Board, not later than 10-calendar days following such transfer, a report showing the following:

(1) The date of transfer;

(2) The net weight, in pounds, of the walnuts transferred;

(3) Whether such walnuts were certified by the inspection service;

(4) Whether such walnuts were inshell or shelled;

(5) The name and address of the transferring handler; and

(6) The name and address of the receiving handler.

(b) The transferring handler shall send two copies of the report to the receiving handler at the time the report is submitted to the Board. The receiving handler shall certify, on one copy of the report, to the receipt of such walnuts and submit it to the Board within 10-calendar days after the walnuts, or copies of such report, have been received, whichever is later.

Dated: March 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8300 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 560

[No. 2000–34]

RIN 1550–AB37

Responsible Alternative Mortgage Lending

AGENCY: Office of Thrift Supervision, Treasury

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is reviewing its mortgage lending regulations to determine their effect in today's markets on not only savings associations and their customers but also on state-regulated housing creditors who may be making alternative mortgage transactions under the Alternative Mortgage Transactions Parity Act and their customers. This advance notice of proposed rulemaking (ANPR) seeks public input on questions OTS will consider as part of that review. OTS could pursue a variety of regulatory approaches to help ensure that the lending regulations are meeting the purposes for which they were intended: encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden. The agency welcomes comments on the advantages, disadvantages, and potential interactions and side effects of various approaches. The agency is particularly interested in public input on potential approaches that will facilitate thrifts? efforts to responsibly address the lending needs of traditionally underserved markets, consistent with safe and sound operation.

DATES: Comments must be received on or before July 5, 2000.

ADDRESSES: Please send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–34. Hand deliver comments to 1700 G Street, NW., lower level, from 9:00 a.m. to 5:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Manager, Supervision Policy, (202) 906–7488; Theresa Stark, Project Manager, Compliance Policy, (202) 906–7054; Paul Robin, Assistant Chief Counsel, (202) 906–6648; Ellen Sazzman, Counsel (Banking and Finance), (202) 906–7133; Koko Ives, Counsel (Banking and Finance), (202) 906–6661, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Goals of the ANPR

Savings associations have long played a major role in providing responsible, affordable home financing. Over the past 25 years, however, the types of loans they have offered—and the competitors they face—have changed considerably. In today's market, mortgage lenders offer potential borrowers a wide variety of options besides the traditional 30-year fixed-rate purchase money mortgage. A secondary market has developed that has narrowed the interest-rate spread on high quality mortgages. Securitization, once available only for high quality fixed-rate mortgages, now funds much of the subprime market. Changes in tax laws have encouraged home equity lending for traditionally unsecured consumer lending purposes.

As the mortgage market has changed over time, so too have OTS's lending regulations, currently codified at 12 CFR part 560. These regulations are based in large part on the assumption that most components of a loan contract should, within the bounds of safety and soundness, be a matter of negotiation between the borrower and the lender. In our experience, that assumption has proven sound for the overwhelming majority of traditional mortgage loans made by savings associations. One of the key issues on which we want public input in this ANPR is whether that assumption holds true for newly developed types of mortgage products—in both the purchase money mortgage and home equity contexts.

We recognize that data about the characteristics of these new products and the markets to which they may be targeted is still being developed. We encourage commenters to share data with us about market trends and the types of loans, lenders, and borrowers involved in various transactions and products. We are particularly interested in data involving high-cost lending and the subprime market, as we believe thrifts are not engaged in significant levels of these activities. Because the

subprime market is growing, we would like to have a thorough understanding of it before thrifts have significant exposure in that market, so our regulations and supervisory strategies address the issues adequately.

Our lending regulations are intended to serve several purposes. As OTS considers whether changes in the lending market should cause the agency to make changes in its regulations, we must balance several goals.

First and foremost, we want our lending regulations to encourage safe and sound lending. Whatever type of mortgage lending or market on which a thrift may focus, the loans it makes must be prudently underwritten. In evaluating mortgage loan applications, institutions must carefully evaluate the capacity of the borrower to make payments on the debt, the level of equity in the property, and the overall credit worthiness of the borrower. The ability of the lender to acquire the borrower?s collateral in order to pay off a loan is no substitute for ensuring that the borrower has the ability to make loan payments in accordance with the terms of the loan contract.

Second, we want to encourage innovation in identifying potential customers and meeting customers' needs. Nontraditional markets may present new opportunities that require novel underwriting approaches but that can still be pursued safely and soundly. Overly detailed regulatory restrictions may quickly prove obsolete as technology advances and potential customers change.

Third, we want to discourage lending practices that prey upon customers' lack of knowledge or options. Such practices may seem like an easy avenue to profitability in the short run, but they are inconsistent with long-term safety and soundness and are contrary to the purposes for which thrifts were created.

Fourth, we want to enable thrifts to compete with other lenders. Except where regulatory restrictions unique to savings associations are statutorily mandated, the agency believes that thrift regulations should be carefully crafted to keep thrifts competitive, consistent with safety and soundness, especially in the area of mortgage lending. Approaches that rely entirely upon OTS's examination, supervision, and enforcement, without addressing OTS regulations that apply both to thrifts and other housing creditors with whom they compete, could have inadvertent negative effects on thrifts' competitiveness without effectively addressing the underlying problems.

Fifth, federal savings associations operate under a uniform system of regulation. Section 5(a) of the Home Owners' Loan Act (HOLA) authorizes OTS ''to provide for the organization, incorporation, examination, operation, and regulation'' of federal savings associations. 12 U.S.C. 1464(a)(1). Uniformity in regulation, examination, and supervision, regardless of geographic location, is a key component of the federal thrift charter. Federal thrifts know they are subject to one set of federal laws and regulations in all of the key areas of their operations, which enables them to conduct those operations consistently and efficiently.

Finally, but by no means of the least importance, we want to minimize regulatory burden on savings associations. Generally, the market should drive the products offered and terms and conditions in loan contracts should be the result of negotiation between well-informed borrowers and lenders. In some instances, where some level of regulation is required, regulatory burden may be minimized by differentiating among different types of institutions based upon their condition, characteristics, activities, or size.

As we evaluate input on potential approaches to modify our mortgage lending regulations, OTS will be keeping each of these goals in mind. We hope that commenters on this ANPR will provide us with a wide variety of useful insights on how potential changes may further—or impair—any of these goals. While every regulatory change cannot further each of these goals, the agency is particularly interested in hearing from commenters about how any proposed approach that advances one goal might have an inadvertent side effect of impairing another goal.

This ANPR and any subsequent rulemaking affecting OTS's mortgage lending regulations could affect not only federal savings associations, but, through the operation of the Alternative Mortgage Transactions Parity Act (''Parity Act''), may also apply to certain mortgage transactions of state-licensed and regulated housing creditors. As discussed more fully in section II.B below, that statute was enacted to enable those state housing creditors to enter into alternative mortgage transactions, such as variable rate loans, notwithstanding state law, so long as they complied with the regulations on alternative rate mortgage transactions that applied to federally chartered depository institutions. OTS does not have licensing, supervision, examination, or enforcement authority over these housing creditors. Those responsibilities rest with the states, even when the housing creditors choose to provide alternative mortgages under the Parity Act. OTS's statutorily assigned role is solely to designate which OTS lending regulations affecting alternative mortgage transactions are appropriate and applicable to housing creditors when they make such loans under the Parity Act. OTS does not collect information about how many housing creditors choose to take advantage of the Parity Act's preemption of state laws affecting alternative mortgage transactions. Today, as OTS considers whether our mortgage lending regulations continue to meet the purposes for which they were intended, we also solicit comments about how the application of these regulations in the context of the Parity Act may affect housing creditors and their borrowers.

This ANPR first discusses the background of changes and developments in statutes, regulations, and the market that have given rise to questions about how best to encourage responsible, and discourage predatory, lending in the market for alternative mortgages. The ANPR then discusses various regulatory approaches the agency may consider in any rulemaking that may follow this ANPR. Non-regulatory approaches such as education, examination, enforcement of existing statutes and regulations, interagency regulations or supervisory guidance, or industry best practices, may also be appropriate to address some identified issues. The agency is committed to considering all viewpoints presented before determining what approaches to pursue.

II. Background

A. Evolution of OTS's Lending Regulations and the Changing Financial Climate

Mortgage lending—both purchase money mortgages and home equity lending—has always been, and remains, a key area of thrift operations. OTS has periodically conducted comprehensive reviews of its lending and investment regulations to ensure that they enhance safe and sound lending, implement statutory requirements, protect consumers, minimize regulatory burden, and are clearly written and consistent with the regulations of other banking agencies. OTS lending regulations have been considerably modified over time as savings associations, their markets, their competition, and the economy have changed.

Historically, mortgage lending regulations for savings associations were extremely detailed, limiting the loan terms such as permissible length, location of collateral, loan-to-value

ratios, and amortization schedules. Over the last two decades, the regulatory approach of OTS and its predecessor agency, the Federal Home Loan Bank Board (Bank Board), has been to gradually move away from detailed authorization of lending products and specific restrictions on their structure. For the most part, OTS has taken a market-based approach to provide flexibility for thrifts and encourage innovations in lending to stimulate credit. To protect consumers, OTS has required thrifts to disclose terms and conditions to consumers on the assumption that, with this knowledge, the parties would be free to negotiate the lending terms. Ideally such negotiation would result in lenders making competitive safe and sound loans that meet borrowers' needs responsibly—a win-win situation for all involved. One of the reasons OTS is publishing this ANPR, however, is evidence indicating that some provisions in our lending regulations may have a different effect in subprime or high-cost loan markets, where borrowers may not have access to the same information or options, as compared with more traditional markets.

For example, in 1993, as part of a regulatory burden reduction effort, the agency removed a requirement that no institution could impose a prepayment penalty on an ARM borrower within 90 days of a notice of a rate adjustment. This permitted prepayment penalties to be imposed on adjustable rate mortgages under the same conditions as apply for fixed-rate mortgages: prepayments must first be applied to loan principal, but the loan contract governs the terms of any prepayment penalty. In the fixed-rate market, and indeed, in ARMs made by thrifts, prepayment penalties generally have not been abused, and have been a means by which some borrowers can negotiate a lower interest rate on their loans. In the subprime market, however, some studies and news reports indicate that prepayment penalties have been particularly subject to abuse by predatory lenders.[1]

We have been told that some nonfederally chartered housing creditors active in the subprime home equity market often structure their loans as alternative mortgage transactions in order to rely on these federal regulations under the Parity Act, because it gives them more flexibility than state law in charging prepayment penalties and late charges.[2] We solicit comment on the accuracy of these observations and the role the Parity Act plays in today's mortgage markets.

B. The Alternative Mortgage Transactions Parity Act

Congress enacted the Parity Act in 1982, a time of high interest rates, to encourage variable rate mortgages and other creative financing to stimulate credit. In hearings before the Senate in 1981, mortgage bankers testified that statutes in 26 states barred mortgage bankers or state-chartered lending institutions from originating alternative mortgage loans or imposed significantly higher restrictions on such loans than applied to federally chartered lenders operating under federal regulations. Congress wanted to give those state-chartered housing creditors parity with federally chartered institutions by authorizing those creditors to make, purchase and enforce alternative mortgage loans.[3]

The Parity Act applies to loans with any ''alternative'' payment features, such as variable rates, balloon payments, or call features. It allows state licensed housing creditors [4] to engage in ''alternative mortgage transactions'' notwithstanding ''any State constitution, law, or regulation,'' provided the transactions are in conformity with certain federal lending regulations.[5]

The Parity Act does not place state housing creditors under the supervision of federal agencies, but instead merely enables those creditors to make alternative mortgage transactions that comply with designated federal regulations, as an alternative to state law.[6] The Parity Act specifically provides that in order to qualify as a housing creditor and take advantage of the Parity Act's preemption, the creditor must be ''licensed under applicable State law and [remain or become] subject to the applicable regulatory requirements and enforcement mechanisms provided by State law''.[7] Housing creditors, other than state-chartered banks and state-chartered credit unions,[8] that wish to make an alternative mortgage transaction under the authority of the Parity Act must abide by designated OTS regulations.

The Parity Act directed the Bank Board, OTS's predecessor agency, to identify, describe, and publish those portions of its regulations that were inappropriate for, and thus inapplicable to, nonfederally chartered housing creditors.[9] In 1982, the Bank Board published a ''Notice to Housing Creditors'' (1982 Notice) with a request for comments.[10] The 1982 Notice provided that state housing creditors, other than commercial banks, credit unions or federal associations, may make alternative mortgage loans subject to the Bank Board's requirements on adjustments to rate, payment, balance or term of maturity and disclosure. The agency premised this approach on the statement of Congressional intent that Title VIII ''does not place state housing creditors under the supervision of the federal agencies, but instead merely enables them to follow a federal program as an alternative to state law.'' [11] The 1982 Notice identified as appropriate and applicable those regulations that ''describe and define'' alternative mortgage transactions and not those regulations intended for the

[1] Prepayment penalties arise in the case of subprime lending with much greater frequency than in the conventional market. Rich Connell, ''Safeguards Sought for Inner City Borrowers,'' Los Angeles Times, March 12, 2000, at B6. For example, in 1998 Merrill Lynch estimated that 50–75% of home equity loans (primarily subprime) that they securitized included some kind of prepayment penalty. ''Lenders Test Whether Mortgage Prepayment Penalties Insulate Against Portfolio Runoff,'' Inside Mortgage Finance, January 16, 1998. In contrast, in the case of home loan purchases by Fannie Mae, the overwhelming majority of which are conventional, less than 2% carry prepayment penalties. ''Fannie Revamps Prepayment Penalty Bonds,'' American Banker, July 20, 1999.

[2] For example, the National Home Equity Mortgage Association (NHEMA), the largest national trade association focusing primarily on the home equity lending market, sued to enjoin Virginia from enforcing its statutes limiting prepayment penalties for alternative mortgage transactions. NHEMA's members include mortgage lending corporations and secured equity lenders. The federal district court found that the Virginia statutes were preempted by the Parity Act and that NHEMA had standing to bring the suit. ''NHEMA's members are state housing creditors subject to the Parity Act who are suffering or will suffer injury from the enforcement of penalties announced by the state.'' *National Home Equity Mortgage Association* v. *Face,* 64 F. Supp. 2d 584, 591 (E.D. Va. 1999), appeal docketed, No. 99–2331 (4th Cir. Oct. 21, 1999).

[3] 12 U.S.C.A. 3801(b) (West 1989). *See also NHEMA* v. *Face,* 64 F. Supp. 2d at 587.

[4] A ''housing creditor'' is a depository institution, a lender approved by the Secretary of Housing and Urban Development for participation in certain mortgage insurance programs, ''any person who regularly makes loans, credit sales or advances secured by interests in properties referred to in [the Parity Act]; or * * * any transferee of any of them.'' 12 U.S.C.A. 3802(2).

[5] *Id.;* 12 U.S.C.A. 3803 (West 1989).

[6] OTS Op Chief Counsel (May 3, 1996) at 8, fn. 16 citing Report of the Committee on Banking, Housing, and Urban Affairs, Senate Report No. 97–463 at p. 55 (May 28, 1982), 97th Cong., 2d Sess. 55 and 48 FR 23,032, 23,053 (May 1983).

[7] 12 U.S.C. 3802(2).

[8] 12 U.S.C.A. 3803(a) (West 1989). State-chartered banks and state-chartered credit unions must comply respectively with regulations of the Office of the Comptroller of the Currency and the National Credit Union Administration.

[9] Section 807 of Pub. L. 97–320 (1982).

[10] 47 FR 51733 (November 17, 1982).

[11] U.S. Senate Report No. 97–463 at p. 55 (May 28, 1982), 97th Cong., 2d Sess. 55 and 48 FR 23032, 23053 (May 23, 1983).

general supervision of federal associations.

In 1983, the Bank Board published a final rule incorporating a revised Notice to Housing Creditors (1983 Notice). The 1983 Notice identified as applicable three provisions that the Bank Board described as an integral part of, and particular to, alternative mortgage transactions, namely § 545.33(c) (authority to make partially amortized or non-amortized loans and to adjust the interest rate payment, balance or term of maturity); (e) (limitations on adjustments on loans secured by borrower-occupied property); and (f)(4)–(11) (requirements for disclosures on loans secured by borrower-occupied property that are not fixed-rated and fully amortized).[12]

In 1996, after reexamining the purposes of the Parity Act, OTS reevaluated which regulations should be deemed appropriate and applicable to alternative mortgage transactions. OTS concluded that variable rate loans made by Wisconsin-chartered savings and loan associations in conformity with the Parity Act are not subject to a Wisconsin statute restricting prepayment penalties on variable rate loans.[13] The opinion stated that because OTS regulations permitted federal thrifts, through terms in their loan contracts, to impose prepayment penalties on variable rate loans (as well as other loans), state housing creditors lending under the Parity Act could impose those penalties. Otherwise state housing creditors would be disadvantaged vis-a-vis federal thrifts—the very result Congress intended to prevent. Using this analysis, the agency did not limit potentially appropriate and applicable regulations for state housing creditors to those regulations applying only to alternative mortgage transactions and not other mortgage loans.

Later that year, OTS modified its Parity Act regulations, now codified at 12 CFR 560.220.[14] The list of OTS regulations applicable to state housing creditors now includes regulations on late charges (§ 560.33), prepayments (§ 560.34), adjustments to home loans (§ 560.35), and disclosure (§ 560.210).[15] Housing creditors must comply with the requirements contained in these regulations in order to obtain the benefit of the Parity Act's preemption of state laws.

C. Subprime Lending and Potentially Predatory Practices

The flow of responsibly delivered credit to underserved markets is critical to their survival. Thrifts and other lenders that provide credit and other financial services in ways that actually reach and fairly serve underserved borrowers fill an important community need. OTS believes it is important for thrifts to reach out to underserved markets and to make safe and sound loans—both prime and subprime—in such markets.

The 1990's have seen an explosive growth in subprime lending: *i.e.*, extending credit to borrowers whose past credit problems make them a higher risk. Subprime lenders use risk-based pricing to serve borrowers with troubled credit histories who cannot obtain credit in the prime market. Subprime loans pose higher risks to an institution and require a lender to have or develop particularized loan underwriting and management skills.[16] The higher degree of risk associated with subprime borrowers often necessitates a higher cost or other non-traditional terms for a subprime loan.

Subprime lending helps provide borrowers with a bridge to conventional financing once the borrower resolves temporary credit problems. However, subprime lending can become predatory if it makes it difficult for borrowers to get out of debt once their credit improves. Unfortunately, some segments of the subprime lending market use unscrupulous practices, more fully described below, to pressure a borrower into a commitment for a high-cost loan. It is important that our mortgage lending regulations actively discourage, rather than inadvertently allow, predatory practices by those who rely upon our regulations—whether they be thrifts, their subsidiaries or affiliates, or non-depository institution housing creditors relying upon the Parity Act.

Predatory practices that unfairly disadvantage borrowers can take a variety of forms. For example, an unscrupulous lender may use pressure tactics to convince the borrower to consolidate mortgage and consumer debt into a loan that is in fact less advantageous to the borrower; refinance a low interest rate mortgage loan to one with higher rates and fees but a longer term that lowers the borrower's current mortgage costs while vastly increasing the total cost of financing; undertake unnecessarily expensive home improvements; or finance unnecessary fees for products like credit insurance.[17]

Predatory lenders may also include loan terms in mortgage documents that make it difficult for the borrower to pay off the loan. Some examples of such loan terms include negative amortization repayment terms where monthly payments fail to pay off accrued interest and increase the principal loan balance; high balloon payments at the end of the loan; high loan-to-value (LTV) loans that lock the borrower into additional debt; mandatory arbitration partially paid for by the borrower; and high prepayment penalties that prevent borrowers from refinancing or selling their home. While these terms may be reasonable when fully understood by a sophisticated borrower with the ability and motivation to shop for a loan, they can be grossly unfair when misunderstood by an unsophisticated borrower pressured into accepting them.

D. Interagency Implications

OTS recognizes that its regulations can only go so far to address predatory practices. Some practices may raise issues involving the Truth in Lending Act, the Home Ownership and Equity Protection Act, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Home Mortgage Disclosure Act, and other statutes and regulations generally affecting depository institutions or creditors. These laws are implemented through regulations imposed by agencies other than OTS, including the Federal Reserve Board and the Department of Housing and Urban Development. Like other insured depository institutions, thrifts are subject to regular examination and supervision for their compliance with this comprehensive federal network of

[12] 48 FR 23032, 23053 (May 23, 1983).

[13] OTS Op. Chief Counsel (April 30, 1996).

[14] As a federal court recently recognized, OTS may revise, on a continuing basis, the list of provisions that apply to housing creditors lending under the authority of the Parity Act. The Parity Act ''implies no temporal limit on [OTS] rulemaking as it applies to state chartered housing creditors.'' *NHEMA* v. *Face*, 64 F. Supp. 2d at 589. As the court noted, the legislative history of the Parity Act shows that Congress contemplated future revisions to federal agency regulations and expected conforming agency actions so that the regulatory list would continue to provide parity to state housing creditors. *Id.,* quoting S. Rep. 97–463, at 55 (1982)(Congressional expectation that ''any future amendments that the agencies make to regulations that are within the scope of this title will conform to the objectives of this title.'')

[15] 12 CFR 560.220 (1999).

[16] On March 1, 1999, the four federal banking agencies—OTS, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency—issued ''Interagency Guidance on Subprime Lending.'' That guidance discussed a variety of controls that an insured depository institution engaging in subprime lending should have in place to ensure that it is properly controlling the risks the activity can present.

[17] For example, a recent New York Times/ABC News article reported examples of a variety of such practices. ''Profiting From Fine Print With Wall Street's Help,'' New York Times (March 15, 2000).

laws and their implementing regulations. Most non-depository institution creditors may be equally subject to such laws, but their regulators do not use the same examination and supervision process to regularly monitor their compliance. OTS will share with other regulators any issues that commenters raise that implicate any of these statutes or their implementing regulations.

OTS participates in a number of interagency efforts to address responsible subprime lending and limit predatory practices. An interagency working group has been established to examine predatory lending issues. This group, which includes the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Department of Justice, the Federal Trade Commission, the Department of Housing and Urban Development, the Federal Housing Finance Board, and the Office of Federal Housing Enterprise Oversight, is considering a variety of policy, regulatory, and legislative options as well as consumer education initiatives.

E. State Initiatives to Address Predatory Lending

OTS is aware that several states have undertaken statutory or regulatory initiatives to protect their citizens from some of the abuses of predatory lending. OTS believes that such initiatives are worth studying as it considers the scope and direction of any potential regulatory actions. We are interested in learning more about these initiatives and other states' proposed statutory or regulatory initiatives in these areas. Commenters are therefore urged to address the advantages and disadvantages of these initiatives, especially in connection with state-regulated housing creditors.

North Carolina, for example, has recently enacted legislation that addresses predatory lending and covers all consumer home loans including first and junior liens and manufactured housing. The legislation limits prepayment penalties, financing credit insurance, flipping (repeated unjustified refinancing of loans), and default incentives. The act also establishes a class of ''high-cost home loans'' (*e.g.,* loans with total points and fees in excess of 5–8% of the loan amount or an annual percentage rate more than 10 percentage points higher than the yield on Treasury securities of comparable maturities). The act applies additional consumer protections to these high-cost loans including required consumer counseling, prohibitions on financing fees and points in the loans, and other safeguards. Violations of the act may result in a determination that the loan is usurious or that an unfair trade practice has occurred. Additionally, the borrower may be permitted to recover attorney's fees.

New York has proposed regulations to impose certain limitations on the making of high-cost home loans to consumers. The proposed regulations define high-cost home loans as loans that are made either at a rate exceeding eight percentage points over U.S. Treasury securities of comparable maturities or, in the case of junior mortgages, nine percentage points above such securities. High-cost home loans also include any mortgage loan with total points and fees (other than bona fide discount points) exceeding five percent of the principal amount of the loan. The proposed regulations prohibit high-cost home loans from including terms such as balloon payments within seven years of origination, negative amortization, elevated rates of interest after default, certain mandatory arbitration clauses, modification or deferral fees, and accelerated payment schedules at the discretion of the lender. The proposed regulations also prohibit high-cost home lending without a disclosure at the time of application concerning home ownership counseling and without due regard to the obligor's ability to repay the loan.

F. Other Regulatory Incentives to Encourage Responsible Lending

OTS invites public comment on potential federal regulatory incentives to encourage financial institutions to seek out responsible ways to meet the lending and other financial services needs of underserved borrowers consistent with safety and soundness. We are interested in innovative approaches to facilitate responsible lending in underserved markets—whether prime or subprime—and to limit predatory practices that subject borrowers to improper pressures, unduly limited options, and unnecessary costs.

III. Potential Regulatory Approaches

This ANPR solicits public input from any interested parties, including savings associations, consumers, housing creditors, and state and local regulators, on a wide variety of potential regulatory approaches that would encourage responsible lending and discourage predatory practices. OTS is particularly interested in learning from the states' experience with recent statutory and regulatory actions dealing with subprime lending and predatory lending practices, such as the North Carolina statute and New York proposed regulation discussed above.

The approaches discussed below focus on mortgage lending, with an emphasis on the high-cost loan arena that has proven particularly vulnerable to potential abuses. We would like input about other potential approaches, consistent with OTS's overall goals for its lending regulations, to address these issues. We recognize that changes in regulations may not ultimately turn out to be the best way to address some of these issues. In some cases supervisory guidance or industry best practices may be more effective and less burdensome.

We encourage commenters to identify potential regulatory or paperwork burdens that some approaches might impose and ways to minimize such burdens. We are also interested in identifying approaches that might impose a disproportionate burden upon small savings associations and alternatives that might minimize such burdens.

Should OTS Modify Its Regulations Implementing the Alternative Mortgage Transactions Parity Act?

As discussed above, the Bank Board and OTS have identified various regulations over time as appropriate and applicable to alternative mortgage transactions under the Parity Act. We solicit comment on whether all of the regulations that are currently designated as appropriate and applicable should continue to be so designated. Should only those OTS regulations that apply exclusively to alternative mortgage transactions be designated appropriate and applicable (the approach taken by the Bank Board in 1982)? Should every regulation that imposes conditions or restrictions on a federal savings association's ability to make an alternative mortgage transaction be designated appropriate and applicable, even if the regulation applies to a broader category of loans (the approach taken by OTS in 1996)? Is another standard appropriate?

The Parity Act, as discussed above, authorizes housing creditors to make alternative mortgage loans as long as the transactions are ''in accordance with'' appropriate and applicable OTS regulations. The Act does not grant housing creditors the same powers as federal savings associations outside of the context of alternative mortgage transactions. Even within that context, state law governs those aspects of a housing creditor's operations not covered by regulations designated as applicable to alternative mortgage transactions under the Parity Act. The limited role the Parity Act plays in the

overall regulation of housing creditors has not always been clearly understood. OTS solicits comments on how best to clarify the interaction between federal and state regulatory schemes affecting housing creditors. OTS is also interested in information about how state laws and regulations on alternative mortgage transactions have changed since the Parity Act was enacted in 1982.

If commenters believe OTS should revise the scope of applicable regulations designated under the Parity Act, we are interested in recommendations about what factors and standards the agency should consider in determining appropriate and applicable regulations. The agency has a continuing responsibility to implement congressional intent as expressed in the 1982 Parity Act consistent with the realities of the current market in which federal savings associations and state housing creditors make alternative mortgage transactions. Therefore, we also are interested in whether additional regulations, including any that may result from a rulemaking following this ANPR, should be added to the list of appropriate regulations.

In determining appropriate and applicable regulations, OTS must keep the overall congressional goal of parity in mind.[18] Like other insured depository institutions, savings associations are subject to a comprehensive regime of regular examination, supervision, and enforcement to determine their compliance with applicable laws and regulations. Non-depository institution state housing creditors are not. How should these significant differences in examination, supervision and enforcement be taken into account so that alternative mortgage transactions by non-depository institution state housing creditors under the Parity Act are treated neither more harshly nor more leniently than similar transactions by savings associations?

In considering whether to alter the operation of OTS lending regulations with respect to institutions benefiting from the Parity Act, we wish to act on an informed basis. OTS is interested in receiving evidence of the extent to which housing creditors taking advantage of the Parity Act are engaged in predatory or abusive lending practices. We recognize that the actions of a few entities do not necessarily represent an entire industry. While a number of press reports have recounted instances of egregious practices in connection with mortgage credit, the degree of participation in such practices by housing creditors that have used the Parity Act and OTS's implementing regulations to avoid state law restrictions has not been studied in any focused manner. Accordingly, we raise the following questions:

- To what extent are housing creditors engaging in predatory or abusive mortgage lending practices that would be contrary to existing state law but for the provisions of the Parity Act and OTS's implementation thereof?
- To what extent are housing creditors engaging in predatory or abusive mortgage lending practices that are contrary to existing laws, but are not being prosecuted by state authorities whose power is specifically reserved by the Parity Act for that purpose?

As previously noted, OTS has curtailed its lending regulations to permit savings associations to respond more efficiently to competitive market forces. Some have argued that the ability of housing creditors to rely on these limited regulations through the Parity Act may have resulted in abuses in markets where there are fewer competitive pressures and no regular governmental oversight. To explore this possibility, we solicit comment on the following questions:

- To what extent do housing creditors lending under the Parity Act use different practices and impose more onerous loan terms in under-served or financially unsophisticated markets than they (or their affiliates) use in other more mainstream markets?
- To what extent do housing creditors lending under the Parity Act provide mortgage credit at rates and with terms significantly above those of conventional prime mortgages to persons with good or excellent credit records?
- To what extent does the use or terms of prepayment penalties, the financing of prepaid credit life insurance or loan fees, or the frequency of partial amortizing, non-amortizing or negative amortizing loans vary among housing creditors or between housing creditors and insured depository institutions? Do variations relate to characteristics of the borrower (such as race or age) or the neighborhood in which the borrower resides or to quantifiable differences in the creditworthiness of the borrower? Do variations result in returns that compensate lenders in excess of risk-adjusted prices or loan terms?
- Do housing creditors refinance their own (or an affiliate's) borrowers' mortgage loans (including the financing of loan fees) at rates at or above those on the existing loan? Does this practice exist at insured depository institutions?
- How, if at all, do the answers to any of the above questions differ for housing creditors who do not make alternative mortgage transactions under the Parity Act but rely instead upon state law?

Should OTS Adopt Regulations on High-Cost Mortgage Loans?

The explosive growth in subprime lending has occurred, and many of the predatory practices in the mortgage market discussed above have developed, since OTS last modified its lending regulations. Where borrowers are less knowledgeable or more in need of credit than has been the case in the past, a market-based approach to regulation that relies on disclosures to equalize the negotiation postures of the lender and borrower may not be effective. As a result, some states have gone beyond the loans covered and disclosures required by the Home Ownership and Equity Protection Act of 1994, Pub. L. 103–325, Title I, Subtitle B (Sept. 23, 1994) (HOEPA), to impose more substantive restrictions and limitations to protect such borrowers. OTS could similarly choose to enact regulations that would apply to high-cost loans originated by some or all savings associations. Depending on the scope of the OTS's Parity Act regulations and whether a state with its own statutes or regulations on high-cost loans had opted out from the Parity Act, these regulations could also apply to high-cost loans made by state housing creditors, as such loans are nearly always structured as alternative mortgage transactions.[19] Such regulations would raise a variety of issues, including:

What loans should be covered? HOEPA applies to certain mortgages where either the annual percentage rate at consummation of the transaction exceeds by more than 10 percentage points the yield on Treasury securities of comparable maturities or the total points or fees the borrower must pay exceed the greater of 8% of the loan amount or $400 (as adjusted annually based on changes in the Consumer Price Index). The North Carolina and New York provisions discussed above apply to a broader range of loans, but similarly use the annual percentage rate and the ratio of total points and fees to loan amount to define the scope of loans covered. Some criteria differ depending on whether senior or junior mortgage liens were involved. What are the advantages or disadvantages of these approaches? Are there other factors that

[18] See discussion in footnote 14, *supra.*

[19] Of course, Parity Act lenders could, if their home state regulations were more lenient than revised OTS regulations, simply follow state law rather than the OTS regulations.

should be considered in defining high-cost loans? How should high-cost loans be defined to reach areas where the potential for abuse is highest without having an unnecessarily chilling effect on non-traditional, but non-abusive, loan structures?

Should OTS impose limits on financing of certain fees or charges? Predatory loans are often dependent on the financing of points and fees in the loan, including charges to third parties. Financing these fees may hide their magnitude and impact from the borrower and enable unethical lenders to pile on unwarranted fees. Should OTS, in connection with high-cost loans, limit an institution's ability to finance fees and points above a certain amount, credit life insurance, and/or brokerage commissions?

Are limits on refinancing appropriate? Should any OTS regulation on high-cost loans limit rollovers and refinancings on such loans within a specified time frame or where a refinancing would actually increase the cost of funds previously loaned? Should we limit or prohibit refinancing an institution's own (or an affiliate's) mortgage unless the annual percentage rate for the new loan is less than the rate reflected on the existing note and no fees are financed?

Are prepayment penalties appropriate for high-cost loans? Do high-cost loans present such potential for the abusive use of prepayment penalties that OTS should limit such penalties on such loans, either with respect to amount or when they can be imposed (*e.g.,* not within a certain number of days after a change in interest rate)? Should prepayment penalty terms in such loans be prohibited except where initial mortgage rates are set at less than market rate?

What limits on balloon payments, negative amortization, post-default interest rates and mandatory arbitration clauses would be appropriate for high-cost loans? Should OTS limit the inclusion of such terms as balloon payments (at least prior to seven years), negative amortization, higher interest penalties after default, and mandatory arbitration clauses for high-cost loans?

Should OTS require lenders to determine the suitability of a mortgage loan product for a particular borrower? As discussed above, an important component of safe and sound lending is determining the borrower's ability to repay the loan. Should OTS require institutions to document the suitability of a particular high-cost loan product for a particular customer/borrower, including an analysis of the customer's ability to repay the loan without relying on the collateral? This approach would be similar to the ''sophisticated investor'' or suitability analysis standard used in the securities industry in determining whether a particular investment product should be sold to a potential investor. Suitability standards as applied to the residential mortgage industry might include a relatively straight-forward analysis of factors such as comparing projected monthly payments against the applicant's income or determining the propriety of add-on features that the consumer may not need, such as credit life insurance where the individual does not have any dependents. If ''suitability'' is not established, then the institution would be subject to additional limits and higher requirements in making a loan. Such standards could impose regulatory burdens on thrifts if they required thrifts to go beyond the factors normally considered in underwriting a loan. Would such a burden be outweighed by the benefits of the potential deterrent effect of such a requirement?

Should OTS require institutions to notify applicants for high cost loans of the availability of home loan counseling programs before closing? For borrowers that do not fully understand the credit process and the choices available to them, a disclosure of the availability of counseling programs may prompt them to more fully explore their options before closing on a high cost loan. The New York provisions, for example, prohibit the making of a high cost loan without first notifying applicants that they should consider counseling and providing them with a list of approved counselors. Should OTS consider imposing some similar type of requirement for institutions that provide high cost loans? How could such a list be generated and by whom? How could we minimize any associated paperwork burden?

Is Differential Regulation Appropriate?

For the past decade, OTS has differentiated among thrifts in determining whether they must file a notice or application with the agency before engaging in certain activities. This differentiation looks at, among other things, a thrift's capital, safety and soundness rating, and compliance ratings. *See* 12 CFR part 516. Such differentiation may be appropriate in the context of subprime or high-cost loan programs. As discussed in the interagency guidance on subprime lending cited above, subprime and high-cost lending can pose potential safety and soundness risks. Before an institution with a lower safety and soundness or compliance rating undertakes a significant level of subprime or high-cost lending, it may be appropriate for the agency to review that thrift's management and internal controls. Thrifts with stronger ratings and management that are eligible for expedited treatment could be subject to different, less onerous restrictions.

If OTS were to take the examination ratings, among other characteristics, of federal savings associations making certain types of alternative mortgage loans, into account in determining whether the agency should receive advance notice of certain lending activities, how could a differential approach apply to housing creditors making similar loans? State-regulated housing creditors are not subject to the same level of regular comprehensive examination as federally insured depository institutions. They are unlikely to have capital, safety and soundness, or compliance ratings. Under these circumstances, enabling such housing creditors to offer certain alternative mortgage loans in parity with federal savings associations—under neither harsher nor more lenient conditions—will require careful agency consideration. Thus, if OTS were to require some federal savings associations to notify OTS before making alternative mortgage transactions as part of a high-cost loan program, how would a comparable requirement be implemented for housing creditors? How, if at all, do states differentiate among the conditions and characteristics of housing creditors they license and regulate?

The Parity Act contemplates situations where a housing creditor may not be able to comply with the letter of an applicable OTS regulation in making an alternative mortgage transaction. In such circumstances, the Parity Act considers the alternative mortgage transaction to be in accordance with the regulation if the transaction is in ''substantial compliance'' with the regulation and any error is corrected within 60 days.[20] OTS solicits comments from housing creditors and their state regulators about how to determine ''substantial compliance'' with OTS regulations using different standards for federal savings associations in different conditions. We seek input from housing creditors and their state regulators about any other practical implications of a differential regulatory approach.

[20] 12 U.S.C. 3803(b).

How Should OTS Deal With Potential Lending Issues Raised by Thrift Subsidiaries or Affiliates?

Some believe that subsidiaries and affiliates of insured depository institutions engage in lending practices that may disadvantage potentially vulnerable customers. OTS is interested in any evidence on this issue. Subsidiaries of savings associations are subject to OTS examination and supervision. If, however, they pose different or higher risks than their parent thrifts in this area, OTS could consider modifying its subordinate organizations regulations, 12 CFR Part 559, to address these risks. Should OTS impose limits on subsidiaries engaged in a significant amount of subprime lending on behalf of their parent federal thrifts? Should OTS restrict institutions' efforts to steer customers who are labeled high risk to one particular organizational unit of a thrift? Should thrifts and their subsidiaries that offer a variety of loans be required to inform customers of all available lending alternatives regardless of the location at which the customer initially seeks assistance? Should OTS consider restricting a thrift's interactions with affiliates that engage primarily in subprime lending? Would any such limits or restrictions affect a thrift's ability to develop expertise in different components of its organization or its ability to manage the risks associated with different types of lending?

Should OTS Impose Certain Due Diligence Requirements?

It has been argued that the secondary market has had a disproportionate impact in facilitating some potentially predatory practices in the high-cost loan market.[21] In addition to their role in originating mortgage loans, thrifts form an important part of the secondary market through their purchase of whole loans or investments in mortgage-backed securities. Given that the secondary market both plays a role in the high-cost loan market and is a vital part of housing credit liquidity, potential solutions to some of the problems in the high-cost mortgage loan market may be found in the secondary market. Accordingly, should OTS require federal thrifts to conduct a due diligence review of potential loan purchases to determine whether the loans meet applicable federal or state rules relating to predatory practices? For example, an institution might sample loan files to ensure that the originating lender has appropriately priced the product, looking for evidence of excessive fees. This review may be merely an adjunct to any other due diligence analysis that prudent institutions would undertake to ensure that purchased loans are properly secured and have been authenticated. How could any burden of such a requirement be minimized consistent with achieving the goal of ensuring that purchased loans meet applicable laws and regulations?

Similarly, should OTS encourage thrifts to inquire whether securitizers from whom they purchase interests in loan pools have conducted their own due diligence efforts with regard to the underlying loans? The institution could, for example, make inquiries to the securitizers concerning their efforts to minimize the inclusion of predatory loans in their securitized pools. Would the concerted efforts by institutions to conduct such inquiries help to deter predatory practices?

We are also interested in understanding the extent of due diligence conducted by secondary market mortgage investors to determine whether housing creditors benefiting from the Parity Act comply with applicable federal consumer protection and fair lending laws. Does due diligence vary depending on whether the selling institution is an insured depository institution undergoing regular federal compliance examinations or an unsupervised housing creditor?

IV. Conclusion and Request for Comments

The flow of responsibly delivered credit to underserved markets is critical to their survival, and any regulatory or enforcement solutions that might be crafted to deal with predatory lenders must proceed with this caution in mind. With this ANPR, OTS seeks input from all interested parties to assist in determining how best to address some of the issues that have arisen in the alternative mortgage market. OTS is interested in hearing from any and all potentially affected persons, including representatives of the thrift industry, housing creditors, consumers, and state governments. Hearing from commenters with diverse viewpoints will help the agency to develop strategies to identify the lending risks and opportunities in underserved communities and to help thrifts develop and institute responsible lending programs in low-income and minority communities. We are interested in data that will help identify where problems exist and whether and how OTS regulations could be modified to help address those problems. We encourage commenters to suggest other approaches not discussed above that could meet our overall goal of encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden.

Dated: March 24, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–8375 Filed 4–4–00; 8:45 am]

BILLING CODE 6720–01–P

[21] See, for example, the New York Times/ABC News article cited in footnote 17, *supra.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–333–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

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 McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes, that currently requires a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. This action would require a reduction in the inspection threshold and repetitive intervals for a certain doubler configuration and an increase in the repetitive inspection interval for a certain other doubler configuration. This proposal is prompted by a determination that certain inspection compliance times were incorrect. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–

333–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: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; 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–333–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–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 11, 1998, the FAA issued AD 98–26–09, amendment 39–10949 (63 FR 70005, December 18, 1998), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes, to require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. That action was prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has informed the FAA that the initial and repetitive inspection compliance times were incorrect in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998, for the doorstops and corners of the forward passenger doorjamb that have been modified previously, using steel doublers. Therefore, McDonnell Douglas has issued Service Bulletin DC9–53–280, Revision 02, dated July 26, 1999, to correct this condition. Paragraph (c)(1) of the existing AD specifies that the high frequency eddy current (HFEC) initial inspection should be performed ''Prior to accumulation of 28,000 landings after accomplishment of the modification, or within 3,500 landings after the effective date of this AD, whichever occurs later. * * *'' The correct initial HFEC inspection compliance time should be 6,000 landings after accomplishment of the modification, or within 3,575 landings after the effective date of the AD, whichever occurs later.

Also, paragraph (c)(1)(i) of AD 98–26–09 specifies that the HFEC repetitive inspection interval is 20,000 landings. The correct repetitive HFEC inspection interval is 3,000 landings.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC–9–53–280, Revision 02, dated July 26, 1999, which describes procedures for the following:

1. Performing a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified;
2. For certain airplanes: Performing a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the doorjamb of the forward passenger door;
3. For certain other airplanes: Performing an HFEC inspection to detect cracks on the skin adjacent to the modification;
4. Conducting repetitive inspections, or modifying the doorstops and corners of the doorjamb of the forward passenger door, and performing follow-on HFEC inspections, if no cracking is detected;
5. Performing repetitive HFEC inspections to detect cracks on the skin adjacent to any doorstop or corner that has been modified; and
6. Modifying doorstops and corners if any crack is found to be 0.5 inch or less in length at all doorstops and corners that have not been modified, and performing follow-on repetitive HFEC inspections.

Accomplishment of the action 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 supersede AD 98–26–09, amendment 39–10949, to require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

The FAA has also noted that a typographical error exists in paragraph (d) of AD 98–26–09 that involves the compliance time for performing an HFEC inspection to detect cracks in the skin adjacent to a certain modification of the doorstops and corners of the forward passenger door doorjamb. That AD specifies that the HFEC inspection should be performed ''Prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,500 landings after the effective date of this AD, whichever occurs later.'' However, the intent of the FAA was to specify that compliance time as

''Prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,575 landings after the effective date of this AD, whichever occurs later.'' Paragraph (d) of this proposed AD has been revised to correctly specify 3,575 landings.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 809 airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD.

The visual inspection that is currently required by AD 98–26–09 and that is retained in this AD takes approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required visual inspection proposed by this AD on U.S. operators is estimated to be $34,320 or $60 per airplane.

Should an operator be required to accomplish the proposed LFEC or x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary LFEC or x-ray inspection proposed by this AD on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

Should an operator be required to accomplish the proposed HFEC inspection, it would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection proposed by this AD on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the proposed modification, it would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $898 and $1,037 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $1,378 and $1,517 per airplane.

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 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 98–26–09, amendment 39–10949 (63 FR 70005, December 18, 1998), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–333–AD. Supersedes AD 98–26–09, Amendment 39–10949.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–280, Revision 02, dated July 26, 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)(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 detect and correct fatigue cracking in the doorstops and corners of the doorjamb of the forward passenger door, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words ''repair'' and ''modify/modification'' in this AD and the referenced service bulletin are used interchangeably.

Visual Inspection

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after January 22, 1999 (the effective date of AD 98–26–09, amendment 39–10949), whichever occurs later, perform a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

Group 1, Low Frequency Eddy Current Inspection

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have not been modified,* prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the forward passenger door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,575 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb, in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 0.50 inch or less in length: Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 0.5 inch in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Group 2, Inspection of Door Corners With Steel Doublers

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual (SRM), using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

(1) *Option 1.* Prior to the accumulation of 6,000 landings after accomplishment of the modification, or within 3,575 landings after January 22, 1999, or within 2,000 landings after the effective date of this AD, whichever occurs latest: Perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection within 2,000 landings after the effective date of this AD or within 3,000 landings from the last inspection in accordance with paragraph (c)(1) of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after the accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Group 2, Inspection of Door Corners With Aluminum Doublers

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with McDonnell Douglas DC–9 SRM or Service Rework Drawing, using an aluminum doubler, prior to the accumulation of 28,000 landings after the accomplishment of the modification, or within 3,575 landings after January 22, 1999, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

(1) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (d) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (d) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Group 2, Inspection of Door Corners With Non-SRM Modifications

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 02, dated July 26, 1999: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously, but not in accordance with McDonnell Douglas DC9 SRM or the Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Terminating Action for Supplemental Inspection Document, AD 96–13–03

(f) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.031 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document) required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

(g)(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, 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–26–09, amendment 39–10949, or AD 96–13–03, amendment 39–9671, are approved as alternative methods of compliance with this AD.

Note 4: 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 §§ 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 March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8387 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–47–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes. This proposal would require a one-time high frequency eddy current inspection to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 25, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking of the splice fitting at fuselage FR47, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by May 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–47–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. 2000–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes. The DGAC advises that it has received reports indicating that cracking occurred in the area surrounding the fastener holes that attach the splice fitting to fuselage frame (FR) 47 on airplanes on which Airbus Modification 5890 had been installed. This modification specifies cold working of the fastener holes in the splice fitting at fuselage FR47. As a result of a laboratory analysis of the cracked splice fittings, the DGAC further advises that inspection of all subject airplanes to detect cracking of the splice fitting at fuselage FR47 is necessary, regardless of whether the modification is installed. Such cracking, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus All Operators Telexes (AOT) A300–53A0350 (for Model A300 series airplanes) and A300–600–53A6123 (for Model A300–600 series airplanes), both dated October 25, 1999. These AOT's describe procedures for a one-time high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR47 between stringers 24 and 25, and corrective actions, if necessary. The corrective actions involve additional HFEC inspections to determine whether any cracking extends beyond fastener ''A'' of the splice fitting at fuselage FR47 and to detect cracking in the area surrounding the fastener holes of the splice fitting on the face of FR47. If cracking is determined to extend beyond fastener 'A', but is not detected in the area surrounding the fastener holes, the corrective actions involve replacing the splice fitting with a new splice fitting. The DGAC classified these AOT's as mandatory and issued French airworthiness directive 1999–515–298(B), dated December 29, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time high frequency eddy current inspection to detect cracking of the splice fitting at fuselage FR47 between stringers 24 and 25, and corrective actions, if necessary. The actions would

be required to be accomplished in accordance with the AOT's described previously, except as discussed below.

Differences Between Proposed AD and Related Service Information

Operators should note that, although the Airbus AOT's specify that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for the proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

The Airbus AOT's describe procedures for an additional HFEC inspection, which under certain circumstances allows operators to defer replacement of the splice fitting. This proposed AD would not require this inspection. Unlike the procedures described in the Airbus AOT's, this proposed AD would not permit further flight if cracks are detected in the splice fitting at fuselage FR47. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject area that is found to be cracked must be repaired or modified prior to further flight.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 83 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 one-time HFEC inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,980, 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 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2000–NM–47–AD.

Applicability: All Model A300–600 series airplanes; and Model A300B4–2C, A300B2K–3C, A300B4–103, A300B4–203, A300B4–600, A300B4–600R, and A300F4–600R series airplanes on which Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199) has been installed; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the splice fitting at fuselage frame (FR) 47, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Perform a one-time high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR47 between stringers 24 and 25 (left-and right-hand sides), in accordance with Airbus All Operators Telex (AOT) A300–53A0350 (for Model A300 series airplanes) or A300–600–53A6123 (for Model A300–600 series airplanes), both dated October 25, 1999; as applicable; at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD.

For Model A300 Series Airplanes

(1) For Model A300 B4–100 series airplanes: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) For airplanes that, as of the effective date of this AD, have accumulated fewer than 20,000 flight cycles since installation of Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199): Perform the one-time HFEC inspection at the later of the times specified in paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this AD.

(A) Within 10,900 flight cycles or 22,000 flight hours since installation of Airbus Modification 5890, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that, as of the effective date of this AD, have accumulated 20,000 or more flight cycles since installation of Airbus Modification 5890: Perform the one-time HFEC inspection within 750 flight cycles after the effective date of this AD.

(2) For Model A300B4/F4–200 series airplanes: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) For airplanes that, as of the effective date of this AD, have accumulated fewer than 20,000 flight cycles since installation of Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199): Perform the one-time HFEC inspection at the later of the times specified in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Within 8,950 flight cycles or 18,600 flight hours since installation of Airbus Modification 5890, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that, as of the effective date of this AD, have accumulated 20,000 or more flight cycles since installation of Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199): Perform the one-time HFEC inspection within 750 flight cycles after the effective date of this AD.

For Model A300–600 Series Airplanes

(3) For Model A300–600 series airplanes on which Airbus Modification 5890 is not installed: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(3)(i) or (a)(3)(ii) of this AD.

(i) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection at the later of the times specified in paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this AD.

(A) Prior to the accumulation of 2,500 total flight cycles or 6,400 total flight hours, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated 10,000 or more total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection within 500 flight cycles after the effective date of this AD.

(4) For Model A300–600 series airplanes on which Airbus Modification 5890 is installed: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(4)(i) or (a)(4)(ii) of this AD.

(i) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection at the later of the times specified in paragraph (a)(4)(i)(A) and (a)(4)(i)(B) of this AD.

(A) Prior to the accumulation of 6,500 total flight cycles or 16,700 total flight hours, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated 10,000 or more total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection within 500 flight cycles after the effective date of this AD.

Corrective Actions

(b) If any cracking is detected during the one-time HFEC inspection required by paragraph (a) of this AD, prior to further flight, remove the splice fitting and perform an HFEC inspection to detect cracking in the area surrounding the fastener holes (fastener holes ''A'' to ''N'') on the face of FR47 adjacent to the affected splice fitting, in accordance with Airbus AOT A300–53A0350 (for Model A300 series airplanes) or A300–600–53A6123 (for Model A300–600 series airplanes), each dated October 25, 1999, as applicable.

(1) If no cracking is detected in the area surrounding the fastener holes on the face of FR47, prior to further flight, replace the splice fitting with a new splice fitting in accordance with the applicable AOT.

(2) If any cracking is detected in the area surrounding the fastener holes on the face of FR47, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–515–298(B), dated December 29, 1999.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8389 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–95–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

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 Airbus Model A320 series airplanes, that currently requires an initial inspection of fastener holes on certain outer frames of the fuselage to detect fatigue cracking, and modification of the area by cold expanding the holes and installing oversized fasteners. This action would revise the applicability to include additional airplanes; require a high frequency eddy current inspection to detect fatigue cracking in the frames and frame feet at fuselage frames FR37 through FR41; and follow-on actions. This proposal also provides for an optional terminating action for the follow-on repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the fuselage frames and frame feet, and consequent reduced structural integrity of the fuselage.

DATES: Comments must be received by May 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–95–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–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 12, 1997, the FAA issued AD 97–11–01, amendment 39–10030 (62 FR 28324, May 23, 1997), applicable to certain Airbus Model A320 series airplanes, to require an initial inspection of fastener holes on certain outer frames of the fuselage to detect fatigue cracking, and modification of the area by cold expanding the holes and installing oversized fasteners. That action was prompted by a report from the manufacturer indicating that, during full-scale fatigue testing of the test article, fatigue cracking was detected in the area where the center fuselage joins the wing. The requirements of that AD are intended to prevent fatigue cracking and consequent reduced structural integrity of this area, which could lead to rapid depressurization of the fuselage.

Actions Since Issuance of Previous Rule

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that, during accomplishment of the eddy current rotating probe inspection to detect fatigue cracking of fastener holes on certain outer frames of the fuselage (required by AD 97–11–01), some operators have reported also finding cracks in the frame and frame feet at fuselage frames FR37 through FR41, stringer 23. This condition, if not detected and corrected, could result in reduced structural integrity of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1141, Revision 1, dated October 4, 1999. This service bulletin describes procedures for conducting a high frequency eddy current (HFEC) inspection to detect fatigue cracking in the frames and frame feet at fuselage frames FR37 through FR41, and follow-on actions. For cases where no cracking is detected, the follow-on actions include one of the following: (1) Repetitive inspections; (2) the modifications specified in Airbus Service Bulletin A320–53–1128 described below; or (3) if applicable, modification of certain fastener holes of the fuselage frames FR37 through FR41 adjacent to stringer 23, and follow-on repetitive inspections. For certain cracking conditions, the follow-on actions involve a bushing repair, or accomplishment of the modifications in Airbus Service Bulletin A320–53–1128. For certain other cracking conditions, the follow-on actions involve simultaneous replacement of the frame segment or frame foot with a new frame segment or frame foot and accomplishment of the modifications in Airbus Service Bulletin A320–53–1128.

Airbus also has issued Service Bulletin A320–53–1128, Revision 01, including Appendix 01, both dated October 4, 1999. This service bulletin describes procedures for a rotating probe eddy current inspection to detect cracks in the fastener holes where the existing fasteners are removed; repair of the fastener hole; installation of four doublers on each frame; cold working of certain fastener holes; installation of new fasteners in the cold-worked holes; and installation of new modified system brackets at fuselage frames FR37 through FR41. These modifications would improve the fatigue strength in the frame and frame feet of left and right fuselage frames FR37 through FR41, and would eliminate the need for the repetitive HFEC inspections in this area.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified both of these service bulletins as mandatory for certain actions, recommended Airbus Service Bulletin A320–53–1128 for certain other actions, and issued French airworthiness directive 98–509–123(B), dated December 16, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–11–01 to require an HFEC inspection to detect fatigue cracking in the frames and frame feet of left and right fuselage frames FR37 through FR41; and follow-on actions. This proposal also would allow for an optional terminating action for the follow-on repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Airbus Service Bulletin A320–53–1141, this proposed AD would not permit further flight if cracks are detected in the frame or frame feet. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject frames or frame feet that are found to be cracked must be repaired or modified prior to further flight.

Operators also should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Cost Impact

There are approximately 198 airplanes of U.S. registry that would be affected by this proposed AD.

The new HFEC inspection that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $23,760, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is 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.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take between 297 and 316 work hours per airplane to accomplish the inspection and modification, at an average labor rate of $60 per work hour. Required parts would cost between $40 and $5,290 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be between $17,860 and $24,250 per airplane.

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 removing amendment 39–10030 (62 FR 28324, May 23, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–95–AD. Supersedes AD 97–11–01, Amendment 39–10030.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category; except those on which Airbus Modification 25896, 25592, or 25593, or Airbus Service Bulletin A320–53–1128, Revision 01, dated October 4, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 prevent fatigue cracking of the fuselage frames and frame feet, and consequent reduced structural integrity of the fuselage, accomplish the following:

Inspection

(a) Perform a high frequency eddy current (HFEC) inspection to detect fatigue cracks in the frames and frame feet at fuselage frames FR37 through FR41, adjacent to stringer 23, at the time specified in paragraph (a)(1), (a)(2), or (a)(3), as applicable; in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999.

(1) For Configuration 01 airplanes, as identified in Airbus Service Bulletin A320–53–1141: Within 3,500 flight cycles after the effective date of this AD.

(2) For Configuration 02 airplanes, as identified in Airbus Service Bulletin A320–53–1141: Within 16,000 flight cycles after accomplishment of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994, or within 3,500 flight cycles after the effective date of this AD, whichever occurs later.

(3) For Configurations 03, 04, and 05 airplanes, as identified in Airbus Service Bulletin A320–53–1141: Prior to the accumulation of 20,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever occurs later.

Repetitive Inspections or Corrective Action(s)

(b) For Configuration 01 airplanes: If no crack is detected during the HFEC inspection required by paragraph (a) of this AD, accomplish the action specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,500 flight cycles until accomplishment of paragraph (f) of this AD. Or

(2) Prior to further flight, modify each fastener hole of the outer frame flanges of left and right fuselage frames FR37 through FR41, adjacent to stringer 23, in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999. Within 16,000 flight cycles after accomplishment of this modification, and thereafter at intervals not to exceed 3,500 flight cycles, repeat the HFEC inspection required by paragraph (a) of this AD until accomplishment of paragraph (f) of this AD.

Note 2: Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999, references Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994, as an additional source of information for accomplishing the modification required by paragraph (b)(2) of this AD.

Note 3: Accomplishment of the modification in accordance with Airbus Service Bulletin A320–53–1125, dated August 5, 1994, prior to the effective date of this AD, is considered acceptable for compliance with the modification requirements of paragraph (b)(2) of this AD.

(c) For Configurations 02, 03, 04, and 05 airplanes: If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,500 flight cycles until accomplishment of paragraph (f) of this AD.

(d) If any crack less than 0.20 inches (5.0 mm) in length is detected during any HFEC inspection required by this AD, prior to further flight, accomplish the actions specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) Repair in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999. Repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,500 flight cycles. Or

(2) Accomplish the actions specified in paragraph (f) of this AD.

(e) If any crack is 0.20 inches (5.0 mm) or greater in length, or if more than one crack per frame side is detected during any HFEC inspection required by this AD, prior to further flight, simultaneously accomplish the actions specified in paragraphs (e)(1) and (e)(2) of this AD.

(1) Replace the frame segment and/or frame foot with a new frame segment or frame foot in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999. And

(2) Accomplish the actions specified in paragraph (f) of this AD.

Optional Terminating Action

(f) Modification of the frames and frame feet area at fuselage frames FR37 through FR41 (including the rotating probe eddy current inspection to detect cracks, fastener hole repair, installation of doublers on each frame, cold working of specified fastener

holes, installation of new fasteners in the cold-worked holes, and installation of new modified system brackets), as applicable, in accordance with Airbus Service Bulletin A320–53–1128, Revision 01, including Appendix 01, both dated October 4, 1999, constitutes terminating action for the requirements of this AD.

Note 4: Accomplishment of the modification in accordance with Airbus Service Bulletin A320–53–1128, including Appendix 1, both dated October 3, 1997, prior to the effective date of this AD, is considered acceptable for compliance with the modification requirements of paragraph (f) of this AD.

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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 6: The subject of this AD is addressed in French airworthiness directive 98–509–123(B), dated December 16, 1998.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8391 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 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 Boeing Model 727–100 series airplanes. This proposal would require repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. This proposal is prompted by reports of corrosion progression through the lower surface of the wing center section into the center wing fuel tank, and subsequent fuel leakage into the ram air duct. The actions specified by the proposed AD are intended to detect and correct such conditions, which, if combined with a leak in the primary or secondary heat exchanger, could result in the release of fuel vapors into the cabin, and consequent adverse effects on flight crew and passengers.

DATES: Comments must be received by May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO 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: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; 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 2000–NM–27–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. 2000–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 7, 1985, the FAA issued AD 85–24–02, amendment 39–5170 (50 FR 47356, November 18, 1985), applicable to all Boeing Model 727–200 series airplanes, which requires repetitive inspections for corrosion, and repair, as necessary, of the lower surface of the wing center section, which forms the upper wall of the ram air plenum chambers.

Since the issuance of that AD, the manufacturer has notified the FAA that certain airplanes were inadvertently not included in the effectivity listing in Boeing Service Bulletin 727–51–17, dated April 26, 1974, which was referenced as the appropriate source of service information for accomplishment of the actions required by AD 85–24–02. That service bulletin describes corrosion inspections for Model 727–200 series airplanes having integral fuel cells installed. Model 727–100 series airplanes were not included in the effectivity of that service bulletin, and consequently, in the applicability of the existing AD, due to the fact that bladder-type fuel cells are installed on the majority of those airplanes. However, it has now been determined that there are three Model 727–100 series airplanes having integral fuel cells installed that are subject to the same unsafe condition as the airplanes that are included in the applicability statement of AD 85–24–02. Therefore, the FAA finds that additional rulemaking is necessary to ensure that the unsafe condition is addressed on all affected airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–51–17, Revision 1, dated January 24, 1986, which describes procedures for repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. The follow-on actions consist of the application of corrosion-inhibiting compound and repair of any corrosion. Accomplishment of the actions described 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, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that Revision 1 of the service bulletin (as well as the original issue of the service bulletin, which was referenced as the appropriate source of service information for accomplishment of the actions required by AD 85–24–02), specifies the effectivity of that service bulletin as, ''all Model 727–200 series airplanes.'' However, the manufacturer has informed the FAA that it has identified three Model 727–100 series airplanes that were inadvertently not included in the effectivity listing and have not accomplished the actions required by that AD. Therefore, the applicability section of this proposed rule specifies only those airplanes (described as Group 1 airplanes in the service bulletin).

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain corrosion repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are 3 Model 727–100 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $720 per airplane, per inspection cycle.

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:

Boeing: Docket 2000–NM–27–AD.

Applicability: Model 727–100 series airplanes, serial numbers 20512, 20513, and 20533; 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 detect corrosion of the lower surface of the wing center section and the surrounding area, and subsequent fuel leakage into the ram air duct, which, if combined with a leak in the primary or secondary heat exchanger, could result in the release of fuel vapors into the cabin, and consequent adverse effects on flight crew and passengers, accomplish the following:

Detailed Visual Inspection

(a) Within 1 year or 3,000 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection in accordance with Part II.B. of the Accomplishment Instructions of Boeing Service Bulletin 727–51–17, Revision 1, dated January 24, 1986. Repeat the inspection thereafter at intervals not to exceed 4 years or 8,000 hours time-in-service, whichever occurs first.

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.''

Follow-On Actions

(1) If no corrosion is detected, prior to further flight, apply corrosion inhibiting compound in accordance with Part II.C. of the Accomplishment Instructions of the service bulletin.

(2) If any corrosion is detected, prior to further flight, repair in accordance with Part II.D. of the Accomplishment Instructions of the service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permit

(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 March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8390 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209601–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing which was published in the **Federal Register** on Wednesday, March 1, 2000 (65 FR 11012), relating to the tax treatment of sponsorship payments received by exempt organizations.

FOR FURTHER INFORMATION CONTACT: Stephanie Lucas Caden at (202) 622–6080.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 512 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations [REG–209601–92] contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations [REG–209601–92], which were the subject of FR Doc. 00–4848, is corrected as follows:

1. On page 11012, third column, in the preamble, the last sentence under the caption **ADDRESSES** is corrected to read, ''The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.''.

2. On page 11012, third column, in the preamble, the text under the caption **FOR FURTHER INFORMATION CONTACT** is corrected to read, ''Concerning the regulations, Stephanie Lucas Caden at (202) 622–6080; concerning submissions and the hearing, LaNita VanDyke at (202) 622–7180 (not toll-free numbers).''.

3. On page 11015, second column, the first sentence of the second paragraph under the caption Comments and Public Hearing is corrected to read, ''A public hearing has been scheduled for June 21, 2000, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.''.

§ 1.513–4 [Corrected]

4. On page 11018, third column, in the 22nd line of § 1.513–4(f) *Example 8,* the language ''Music Shop's name and address in the lobby'' is corrected to read, ''Music Shop's name, address and telephone number in the lobby''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–8030 Filed 4–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107872–99]

RIN 1545–AXI8

Coordination of Sections 755 and 1060 Relating to Allocation of Basis Adjustments Among Partnership Assets

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the allocation of basis adjustments among partnership assets under section 755. The proposed regulations are necessary to implement section 1060(d), which applies the residual method to certain partnership transactions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by July 5, 2000.

Outlines of topics to be discussed at the public hearing scheduled for July 12, 2000, must be received by June 21, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–107872–99), 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–107872–99), 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/reglist.html. The public hearing will be held in room 2716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Matthew Lay or Craig Gerson, (202) 622–3050; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

As part of the Tax Reform Act of 1986, Congress enacted section 1060, which generally requires the use of the residual method in order to allocate the purchase price of ''applicable asset acquisitions'' among individual assets purchased. An applicable asset acquisition is defined as any transfer of assets that constitute a trade or business where the transferee's basis is determined wholly by reference to the consideration paid for the assets. Both direct and indirect transfers of a business were intended to be covered by the provision, including ''the sale of a partnership interest in which the basis of the purchasing partner's proportionate share of the partnership's assets is adjusted to reflect the purchase price.'' See section 1060(c) and S. Rep. No. 99–313, 1986–3 C.B. Vol. 3 at 254–255.

In July of 1988, the IRS and the Treasury Department issued temporary and proposed regulations, which, among other things, provided guidance concerning the application of section 1060 and coordinated the application of sections 755 and 1060. TD 8215 (1988–2 C.B. 305).

In 1988, shortly after the IRS and the Treasury Department issued its temporary and proposed regulations, Congress enacted section 1060(d), which expressly addresses the extent to which section 1060 should apply to transactions involving partnerships. As amended in 1993, section 1060(d)(1) applies the section 1060 residual method in the case of a distribution of partnership property or a transfer of an interest in a partnership, but only in determining the value of section 197 intangibles for purposes of applying section 755. Section 1060(d)(2) provides that if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of section 1060(b) (which imposes certain reporting requirements for applicable asset acquisitions).

Section 755 governs the allocation of certain adjustments to the basis of partnership property among partnership assets. Section 1.755–2T applies the residual method to transfers and distributions which trigger basis adjustments under section 743(b) (involving certain transfers of partnership interests) or section 732(d) (involving certain distributions within two years of a partnership interest transfer) if the assets of the partnership constitute a trade or business for purposes of section 1060(c). Section 1.755–2T(c) contains a cross reference to the reporting requirements applicable to such transfers and distributions.

Explanation of Provisions

1. Application of Proposed Regulations

The temporary regulations under section 755 apply only if the assets of the partnership comprise a trade or business within the meaning of section 1060(c), and the basis adjustments are made under section 743(b) or section 732(d). They do not apply the residual method in valuing partnership property for the purpose of allocating basis adjustments under section 734(b). However, the temporary regulations were issued prior to the enactment of section 1060(d)(1), which expressly refers to basis adjustments triggered by partnership distributions, and does not reference a trade or business requirement.

The IRS and the Treasury Department anticipate that the regulations under § 1.755–2, when finalized, will apply to all transfers of partnership interests and partnership distributions to which section 755 applies, and not just to transfers and distributions relating to partnerships conducting a trade or business. This approach is consistent with the language of section 1060(d) and is supported by language contained in the legislative history. See H.R. Rep. No. 100–795, at 70 n.34 (1988) (the IRS is not precluded from applying the residual method under other provisions of the Code).

Proposed § 1.755–2(d) contains a cross reference to the reporting requirements applicable to such transfers and distributions.

2. Basis Adjustments Under Section 743(b) or 732(d)

In the case of a basis adjustment under section 743(b) or section 732(d), the proposed regulations determine the fair market value of partnership assets in two steps. In most situations, it first is necessary to determine partnership gross value. Second, partnership gross value must be allocated among partnership property.

(a) Partnership gross value. In general, partnership gross value equals the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner equal to the transferee's basis in the transferred partnership interest immediately following the relevant transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities). Here, the amount paid for the partnership interest provides the frame of reference for valuing the entire partnership.

In the case of basis adjustments which are triggered by an exchange of a partnership interest in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest (transferred basis exchange), the transferee's basis does not necessarily have any connection to the value of partnership assets. Accordingly, a transferred basis exchange provides no frame of reference for valuing partnership assets. Furthermore, if the valuation rules which apply to other transfers were applied to transferred basis exchanges, then partners could use these exchanges to shift basis from capital gain assets to ordinary income assets, or vice versa. The proposed regulations do not provide a rule addressing transferred basis exchanges. Comments are requested as to how the residual method should apply if basis adjustments under section 743(b) are triggered by transferred basis exchanges, or if basis adjustments under section 732(d) relate to prior transferred basis exchanges.

(b) Allocating partnership gross value among partnership property. Once determined, partnership gross value is allocated among five classes of property, as follows: first among cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions (referred to hereafter as cash); then among partnership assets other than cash, capital assets, section 1231(b) property, and section 197 intangibles (referred to hereafter as ordinary income property); then among capital assets and section 1231(b) property other than section 197 intangibles; then among section 197 intangibles other than goodwill and going concern value; and finally to goodwill and going concern value (referred to hereafter as goodwill).

In determining the values to be assigned to assets in the third, fourth, and fifth classes, properties or potential gain within these classes that are treated as unrealized receivables under the flush language in section 751(c) are not counted as assets in the second class. To provide otherwise would be inconsistent with the residual method, because the residual method is justified, at least in part, by the fact that goodwill is not readily subject to valuation. Where goodwill is subject to amortization under section 197, the portion of the intangible that is subject to recapture under section 1245 will be treated as an unrealized receivable under the flush language of section 751(c). To assign value to this portion of the asset in the second class would require a determination that the goodwill has a value equal to at least the amount of the recapture. If these assets are not readily subject to valuation, this determination presumably could not be made. Accordingly, in allocating value among the five classes under the residual method, it is appropriate to include properties or potential gain treated as unrealized receivables under the flush language of section 751(c) within the overall class to which the underlying property belongs rather than treating the section 751(c) portion of such property as a separate asset included in the second class.

Although properties or potential gain treated as unrealized receivables under the flush language of section 751(c) are not included in the second class of assets under these proposed regulations for purposes of allocating value, they are treated as separate assets that are ordinary income property for purposes of allocating basis adjustments among such assets under § 1.755–1.

With respect to allocating value within the asset classes, in general, if the value assigned to a class is less than the sum of the fair market values of the assets in that class (determined without

regard to the residual method), then the assigned value must be allocated among the individual assets in proportion to their fair market values. Although, as discussed above, it is not appropriate to treat properties or potential gain treated as unrealized receivables under the flush language of section 751(c) as separate ordinary income assets, it is appropriate to allocate value within each class by giving priority to the portions of the assets that will be taxed at higher rates as ordinary income. Such treatment better equates the basis adjustments of the transferee with the higher taxed income recognized by the transferor, thereby avoiding duplicative recognition of ordinary income on subsequent transfers with respect to the same asset. Accordingly, once values have been assigned generally to the third, fourth, and fifth classes of assets, such values will be assigned within each of these classes first to properties or potential gain treated as unrealized receivables under the flush language in section 751(c), if any, in proportion to the income that would be recognized if the underlying assets were sold for their fair market values (determined without regard to the residual method), but only to the extent of the income attributable to the unrealized receivables. Any remaining value in each class will be allocated among the remaining portions of the assets in that class in proportion to the fair market values of such portions (determined without regard to the residual method).

In general, the value assigned to an asset (other than goodwill) cannot exceed the fair market value (determined without regard to the residual method) of that asset on the date of the relevant transfer. Therefore, if partnership gross value exceeds the aggregate value of the partnership's individual assets, the excess must be allocated entirely to the value of goodwill. However, an exception is provided if partnership gross value exceeds the aggregate value of the partnership's individual assets, and goodwill could not under any circumstances attach to the assets. Under this exception, the excess partnership gross value must be allocated among all partnership assets other than cash in proportion to their fair market values (determined without regard to the residual method).

(c) Special situations. In general, partnership gross value may be determined without reference to the value of individual partnership assets. In calculating partnership gross value, it is only necessary to determine the relevant partner's share of book value in partnership assets and how much book gain or loss must be recognized by the partnership on the disposition of all such assets to cause the partner to receive the appropriate liquidating distribution. The manner in which the book gain or loss is allocated among the partnership's assets generally will not affect the amount of the liquidating distribution to the partner.

In certain circumstances, however, such as where book income or loss with respect to particular partnership properties is allocated differently among partners, partnership gross value may vary depending on the value of particular partnership assets. In these situations, it is not possible to first determine the total value of the partnership (i.e., partnership gross value) and then apply the residual method to allocate that value to the partnership's individual assets. Instead, it is necessary first to determine the fair market value of the partnership's individual assets (determined taking into account all relevant facts and circumstances), and then to assign such value among the asset tiers described in the residual method such that the combined value of all partnership assets would cause the appropriate distribution to the relevant partner. The proposed regulations include a rule to address these special situations. In addition, under this rule, if the value determined for assets in the first four asset classes is not sufficient to cause the appropriate liquidating distribution, then, so long as goodwill could attach to the assets of the partnership, the value of goodwill is presumed to be an amount that, if assigned to such property, would cause the appropriate liquidating distribution.

3. Basis Adjustments Under Section 734(b)

The proposed regulations do not provide a rule for valuing partnership assets in the case of distributions that result in a basis adjustment under section 734(b). The IRS and the Treasury Department have considered several alternative approaches, described below. Two of these approaches utilize a method similar to the one provided for basis adjustments under sections 743(b) and 732(d); that is, first determine partnership gross value and then allocate such amount among the partnership property applying the residual method. The third approach does not rely on the concept of partnership gross value. The IRS and the Treasury Department request comments as to which, if any, of these approaches should be utilized in applying the residual method in the context of basis adjustments under section 734(b). In addition, comments are requested concerning whether the second or third approach should be adopted in the context of basis adjustments under sections 743(b) and 732(d) involving transferred basis transactions.

Under the first approach, in the case of a distribution which results in a basis adjustment under section 734(b) and which causes the distributee partner's interest in the partnership to decrease, partnership gross value would be deemed to equal the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner (attributable to the reduction in interest) equal to the value of the consideration received by the distributee partner in the distribution. Under this approach, the amount distributed in exchange for the relinquished interest would provide the frame of reference for valuing the entire partnership. The reduction in a partner's interest could be measured as the difference between the partner's interest in the partnership immediately before the distribution and the partner's interest in the partnership immediately after the distribution. However, the IRS and the Treasury Department recognize that measuring the reduction in a partner's interest in the partnership in connection with a distribution can be difficult in some situations (for example, situations in which partners do not share profits or other items in proportion to their relative capital account balances). Moreover, in the case of a distribution that results in a basis adjustment under section 734(b) and does not reduce the distributee partner's interest in the partnership (such as in a pro rata distribution of cash), the transaction provides no frame of reference to value the partnership.

A second approach would be to determine partnership gross value as the value of the entire partnership as a going concern, and to apply the residual method by reference to that overall value. This method has the disadvantage of divorcing the valuation of partnership property from the transaction that gives rise to the adjustment. However, there would be no need to measure the reduction in the distributee partner's interest or even to have a reduction in the distributee partner's interest to apply this method. The method would work equally well for distributions where the partner's interest in the partnership is reduced and for distributions where it is not.

Under a third possible approach, the concept of partnership gross value would be disregarded, and, instead, value would be allocated to goodwill for

section 755 purposes only if the amount of a positive basis adjustment under section 734(b) exceeds the appreciation in all assets of the character required to be adjusted which are not goodwill. This approach avoids the problems relating to the measurement or presence of a reduction in the distributee partner's interest and has the added benefit of avoiding a valuation of the partnership's overall operations. In contrast with the second approach, however, the value that is assigned to goodwill under this approach would not necessarily bear any relation to the actual value of goodwill in the hands of the partnership. In addition, this rule arguably would be inconsistent with the rule in § 1.755–1(c), which requires that positive basis adjustments must be allocated to undistributed property of like character to the distributed property (or capital gain property in the case of adjustments attributable to gain recognized by the distributee partner) first in proportion to unrealized appreciation with respect to such property and then in proportion to fair market value. Under the third approach, a basis adjustment under section 734(b) to the class of assets composed of capital assets and property described in section 1231(b) could not exceed the unrealized appreciation with respect to any such partnership property other than goodwill. Accordingly, a section 734(b) basis adjustment never would be made in proportion to the fair market value of the property in the class of capital assets and property described in section 1231(b).

4. Effect on § 1.755–1

Section 1.755–1(b)(3)(ii)(B) of the Income Tax Regulations published on December 15, 1999 (64 FR 69903) contains a rule allocating discounts among capital assets following the transfer of a partnership interest that results in a basis adjustment under section 743(b). Because proposed § 1.755–2 takes discounts and premiums into account when assigning values to partnership property for purposes of section 755 in such cases, the rule in § 1.755–1(b)(3)(ii)(B) would become unnecessary.

5. Possible Expansion of Regulations

With respect to transfers of partnership interests, the IRS and the Treasury Department are considering applying the rules contained in these proposed regulations not just for valuing partnership assets for purposes of applying section 755, but also to determine the value of assets for purposes of applying section 1(h)(6)(B) (collectibles gain or loss) with respect to partnerships, section 1(h)(7) (section 1250 capital gain), and section 751(a) (ordinary income treatment upon sale or exchange of an interest in a partnership). Applying the rules in these proposed regulations in connection with these provisions is consistent with the legislative history to section 1060(d) and would provide greater uniformity with respect to the amount and character of income recognized upon the transfer of a partnership interest and the basis adjustments to partnership assets to which the different income character is attributable. However, this application of the rules could cause an increase in complexity, particularly if a section 754 election is not in effect for a year in which the transfer of a partnership interest occurs (so that application of the residual method otherwise would not be required). The IRS and the Treasury Department request comments on whether partnerships should value partnership assets using the residual method for purposes of sections 1(h)(6)(B), 1(h)(7), and 751(a).

Proposed Effective Date

The regulations are proposed to be effective for any basis adjustment resulting from any distribution of partnership property or transfer of a partnership interest that occurs on or after the date final regulations are published in the **FEDERAL REGISTER.**

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 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, 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 businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 12, 2000, beginning at 10 a.m., in room 2716 of the Internal Revenue Building. 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 building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must 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 June 21, 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 Matthew Lay of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department 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 a new entry in numerical order to read in part as follows:

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

Section 1.755–2 also issued under 26 U.S.C. 755 and 26 U.S.C. 1060. * * *

Par. 2. Section 1.755–2 is added to read as follows:

§ 1.755–2 Coordination of sections 755 and 1060.

(a) *Coordination with section 1060*—(1) *In general.* If there is a basis adjustment to which this section applies, the partnership must determine the fair market value of each item of partnership property under the residual method, as described in paragraph (b) of this section, and the rules of § 1.755–1 must be applied using the values so determined.

(2) *Application of this section.* This section applies to any basis adjustment made under section 743(b) (relating to certain transfers of interests in a partnership) or section 732(d) or section 734(b) (relating to certain partnership distributions).

(b) *Residual method*—(1) *In general*—(i) *Five classes.* (A) Except as provided in paragraph (b)(3) of this section, partnership gross value (as defined in paragraph (c) of this section) is allocated among five asset classes in the following order—

(*1*) Among cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions (referred to hereafter as cash);

(*2*) Among partnership assets other than cash, capital assets, section 1231(b) property, and section 197 intangibles (referred to hereafter as ordinary income property);

(*3*) Among capital assets and section 1231(b) property other than section 197 intangibles;

(*4*) Among section 197 intangibles other than goodwill and going concern value; and

(*5*) To goodwill and going concern value (referred to hereafter as goodwill).

(B) In determining the values to be assigned to each class, properties or potential gain treated as unrealized receivables under the flush language in section 751(c) are not counted as assets in the second class. For example, any portion of goodwill that would result in ordinary income under section 1245 if the goodwill were sold would be included in the residual class for goodwill.

(ii) *Impaired classes.* If the value assigned to a class is less than the sum of the fair market values (determined under paragraph (b)(2)(i) of this section) of the assets in that class, then the assigned value generally must be allocated among the individual assets in proportion to such fair market values. However, in the third, fourth, and fifth classes, values must be assigned first to properties or potential gain treated as unrealized receivables under the flush language in section 751(c), if any, in proportion to the income that would be recognized if the underlying assets were sold for their fair market values (determined under paragraph (b)(2)(i) of this section), but only to the extent of the income attributable to the unrealized receivables. Any remaining value in each class will be allocated among the remaining portions of the assets in that class in proportion to the fair market values of such portions (determined under paragraph (b)(2)(i) of this section).

(2) *Special rules.* For purposes of this section:

(i) Except as otherwise provided in this section, the fair market value of each item of partnership property (other than goodwill) shall be determined on the basis of all the facts and circumstances, taking into account section 7701(g).

(ii) If goodwill could not under any circumstances attach to the assets of a partnership, then the value of goodwill is zero. This might occur, for example, if a partnership's only asset is a vacant parcel of real estate that does not produce current income.

(iii) (A) The value assigned to an asset (other than goodwill) shall not exceed the fair market value (determined under paragraph (b)(2)(i)) of that asset on the date of the relevant transfer, unless—

(*1*) Partnership gross value (as defined in paragraph (c) of this section) exceeds the aggregate value of the partnership's individual assets; and

(*2*) Goodwill could not under any circumstances attach to the assets.

(B) If both of these conditions are satisfied, the excess must be allocated among all partnership assets other than cash in proportion to such fair market values.

(3) *Special situations.* In certain circumstances, such as where book income or loss with respect to particular partnership properties is allocated differently among partners, partnership gross value may vary depending on the value of particular partnership assets. In these special situations, the fair market value of each item of partnership property (other than goodwill) first shall be determined on the basis of all the facts and circumstances, taking into account section 7701(g). Such value then shall be assigned within the first four asset classes under the residual method described in paragraph (b)(1) of this section in a manner that is consistent with the ordering rule used in paragraph (b)(1) of this section (together with the special rules in paragraph (b)(2) of this section) so that the amount of the liquidating distribution described in paragraph (c)(1) of this section would equal the transferee's basis in the transferred partnership interest. If the value so determined for the assets in the first four asset classes is not sufficient to cause the appropriate liquidating distribution, then, so long as goodwill may attach to the assets of the partnership, the fair market value of goodwill shall be presumed to equal an amount that if assigned to goodwill would cause the appropriate liquidating distribution.

(c) *Partnership gross value*—(1) *Basis adjustments under section 743(b) and section 732(d)*—(i) *In general.* In the case of a basis adjustment under section 743(b) or 732(d), partnership gross value generally is equal to the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner equal to the transferee's basis in the transferred partnership interest immediately following the relevant transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities) pursuant to the hypothetical transaction (as defined in paragraph (c)(3) of this section). Solely for the purpose of determining partnership gross value under the preceding sentence, where a partnership interest is transferred as a result of the death of a partner, the transferee's basis in its partnership interest is determined without regard to section 1014(c), and is deemed to be adjusted for that portion of the interest, if any, which is attributable to items representing income in respect of a decedent under section 691.

(ii) *Transferred basis transactions.* [Reserved]

(2) *Basis adjustments under section 734(b).* [Reserved]

(3) *Hypothetical transaction.* For purposes of this paragraph (c), the hypothetical transaction means the disposition by the partnership of all partnership property in a fully taxable transaction for cash, followed by the payment of all partnership liabilities (within the meaning of section 752 and the regulations thereunder), and the distribution of all remaining proceeds to the partners.

(d) *Required statements.* See § 1.743–1(k)(2) for provisions requiring the transferee of a partnership interest to provide information to the partnership relating to the transfer of an interest in the partnership. See § 1.743–1(k)(1) for a provision requiring the partnership to attach a statement to the partnership return showing the computation of a basis adjustment under section 743(b) and the partnership properties to which the adjustment is allocated under section 755. See § 1.732–1(d)(3) for a

provision requiring a transferee partner to attach a statement to its return showing the computation of a basis adjustment under section 732(d) and the partnership properties to which the adjustment is allocated under section 755. See § 1.732–1(d)(5) for a provision requiring the partnership to provide information to a transferee partner reporting a basis adjustment under section 732(d).

(e) *Examples.* The provisions of this section are illustrated by the following examples, which assume that the partnerships have an election in effect under section 754 at the time of the transfer. Except as provided, no partnership asset (other than inventory) is property described in section 751(a). The examples are as follows:

Example 1. (i) A is the sole general partner in ABC, a limited partnership. ABC has goodwill and three other assets with fair market values (determined under paragraph (b)(2)(i) of this section) as follows: inventory worth $1,000,000, a building (a capital asset) worth $2,000,000, and section 197 intangibles (other than goodwill) worth $800,000. ABC has one liability of $1,000,000, for which A bears the entire risk of loss under section 752 and the regulations thereunder. Each partner has a one-third interest in partnership capital and profits. D purchases A's partnership interest for $1,000,000.

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $1,000,000 ($2,000,000–$1,000,000). Under paragraph (c) of this section, partnership gross value is $4,000,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $1,000,000).

(iii) Under paragraph (b) of this section, partnership gross value is allocated first to the inventory ($1,000,000), then to the building ($2,000,000), and third to section 197 intangibles $800,000. The partnership must allocate the remainder of partnership gross value, $200,000, to goodwill ($4,000,000–$3,800,000). D's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

Example 2. (i) D is the sole general partner in DEF, a limited partnership. DEF has goodwill and three other assets with fair market values (determined under paragraph (b)(2)(i) of this section) as follows: inventory worth $1,000,000, a building (a capital asset) worth $2,000,000, and equipment (section 1231(b) property) worth $750,000. DEF has one liability of $1,000,000, for which D bears the entire risk of loss under section 752 and the regulations thereunder. Each partner has a one-third interest in partnership capital and profits. If the equipment were sold for $750,000, $250,000 would be depreciation recapture treated as an unrealized receivable under the flush language in section 751(c). G purchases E's limited partnership interest for $750,000.

(ii) Under paragraph (c) of this section, partnership gross value is $3,250,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to G equal to $750,000).

(iii) Under paragraph (b) of this section, partnership gross value is allocated first to inventory ($1,000,000), and then to the class containing capital assets and section 1231(b) property ($2,250,000). Within that class, value must be assigned first to the $250,000 ordinary gain portion of the equipment (properties or potential gain treated as unrealized receivables under the flush language in section 751(c)). The remaining value in the class ($2,250,000 minus $250,000, which is $2,000,000) must be allocated among the remaining portions of the assets in that class in proportion to the fair market values of such portions (determined under paragraph (b)(2)(i) of this section). The remaining portion of the building is $2,000,000. The remaining portion of the equipment is $500,000 ($750,000, its fair market value, minus $250,000, the section 751(c) portion). Thus, the remaining portion of the building will be allocated $1,600,000 ($2,000,000 multiplied by $2,000,000/$2,500,000) and the remaining portion of the equipment will be allocated $400,000 ($2,000,000 multiplied by $500,000/$2,500,000). Nothing is allocated to goodwill. G's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

Example 3. (i) G and H are partners in partnership GH. GH has goodwill and three other assets with fair market values (determined under paragraph (b)(2)(i) of this section) as follows: inventory worth $1,000,000 and two buildings (capital assets), each worth $500,000. GH has no liabilities. The GH partnership agreement provides that the partners will allocate all income, gain, loss, and deductions equally, except with respect to depreciation, loss, and gain from the buildings. With respect to the buildings, depreciation and loss are allocated two-thirds to G and one-third to H. Gain from the disposition of the buildings is charged back two-thirds to G and one-third to H to the extent of accrued depreciation, and then is allocated equally between G and H. G transfers one-half of its interest in GH to I for $450,000. At the time of the transfer, the book value of the inventory is $900,000, the book value of each building is $300,000, and $150,000 of book depreciation has accrued with respect to each building. The capital account attributable to the partnership interest purchased by I from G is equal to $350,000. H's capital account is equal to $800,000, and the capital account attributable to G's retained partnership interest is equal to $350,000.

(ii) Because gain with respect to the inventory and buildings are shared in different ratios as between H, and G and I, a partnership gross value cannot be determined without assuming values for the individual assets of the partnership. Accordingly, the rule for special situations in paragraph (b)(3) of this section must be used to compute the value of the partnership's assets.

(iii) Applying paragraph (b)(2)(i) of this section, the fair market value of the inventory is $1,000,000 and the fair market value of each building is $500,000. These values would result in a liquidating distribution to I under paragraph (c)(1) of this section equal to $500,000, determined as follows. The book gain from the sale of the inventory would equal $100,000 ($1,000,000 − $900,000) and the book gain from the sale of each building would equal $200,000 ($500,000 − $300,000). Book gain from the inventory equal to $25,000 ($100,000 × ¼) and book gain from each building equal to $62,500 (($150,000 × ⅓) + ($50,000 × ¼)) would be allocated to I. The sum of this book gain ($25,000 + $62,500 + $62,500 = $150,000) and I's capital account inherited from G ($350,000) would equal $500,000.

(iv) Because I's basis in the transferred partnership interest is only $450,000, under paragraph (b)(2)(ii) of this section, the value with respect to the buildings must be reduced in proportion to the fair market values of such assets to an amount that would cause a liquidating distribution to I equal to $450,000. This calculation is accomplished as follows. In order for I to receive a liquidating distribution of $450,000, the book gain attributable to the buildings that is allocated to I must equal $75,000 ($350,000 inherited capital account + $25,000 book gain from inventory + $75,000 book gain from buildings). Each building has the same book value and fair market value, and the allocations with respect to each building are the same as between G, H, and I. Accordingly, I's share of book gain should be allocated equally between the two buildings, $37,500 to each. In order for I to be allocated $37,500 of book gain with respect to each building, the total amount of book gain with respect to each building would have to be $112,500 ($112,500 × ⅓ = $37,500). Adding this book gain to the current book value of each building results in a value for each building of $412,500 ($300,000 + $112,500). Nothing is allocated to goodwill. I's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

Example 4. The facts are the same as *Example 3*, except that I purchases one-half of G's partnership interest for $550,000. Because the fair market value of the partnership's assets (as determined under paragraph (b)(2)(i) of this section) in the first four asset classes under the residual method is not sufficient to cause a liquidating distribution to I equal to its basis in the purchased interest (i.e., $550,000), the additional value necessary to cause such a distribution must be allocated to goodwill.

Accordingly, under paragraph (b)(3) of this section, the value of the partnership's assets is as follows: inventory $1,000,000, each building $500,000, and goodwill $200,000. I's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

(f) *Effective date.* This section applies to any basis adjustment resulting from any distribution of partnership property or transfer of a partnership interest that occurs on or after the date final regulations are published in the **Federal Register.**

§ 1.755–2T [Removed]

Par. 3. Section 1.755–2T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–8276 Filed 4–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[REG–100291–00]

RIN 1545–AX74

Lifetime Charitable Lead Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: These proposed regulations relate to the definitions of a guaranteed annuity interest and a unitrust interest for purposes of the income, gift, and estate tax charitable deductions. The proposed regulations will affect taxpayers who make transfers to charitable lead trusts. The purpose of these proposed regulations is to restrict the permissible terms for charitable lead trusts in order to eliminate the potential for abuse. This document also provides notice of a public hearing.

DATES: Written and electronic comments must be received by June 23, 2000. Outlines of topics to be discussed at the public hearing scheduled for June 29, 2000, must be received by June 8, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–100291–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100291–00), 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.gov/tax regs/regslist.html. The public hearing will be held in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Scott S. Landes, (202) 622–3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In general, if interests in the same property are transferred for both charitable and noncharitable purposes, the charitable interest will qualify for the charitable deduction for federal income, gift, and estate tax purposes only if the interest is in one of certain prescribed forms. If the charitable interest is not a remainder interest, sections 170, 2522, and 2055 of the Internal Revenue Code (Code) require that the charitable interest be in the form of either a guaranteed annuity interest or a fixed percentage of the annual fair market value of the property (unitrust interest). In addition, an income tax charitable deduction is available only if the grantor is treated as the owner of the entire trust under subpart E, part I of subchapter J of the Code.

The requirement that a nonremainder interest passing to charity be in the form of a guaranteed annuity interest or a unitrust interest was added to the Code by the Tax Reform Act of 1969. That Act also added the requirement that a remainder interest passing to charity must generally be in the form of a charitable remainder unitrust or annuity trust or a pooled income fund. The statutory provisions for charitable remainder trusts and pooled income funds specifically state the permissible terms for these entities. Section 664(d)(1)(A) and (d)(2)(A) provide that the permissible term for a charitable remainder trust is a period of years (not to exceed 20 years) or the life or lives of individuals who are living at the creation of the trust. Similarly, section 642(c)(5)(A) provides that the permissible term for the noncharitable income interest in a pooled income fund is the life of one or more beneficiaries living at the time of the transfer.

Unlike the statutory provisions for charitable remainder trusts and pooled income funds, neither the statute nor the legislative history sets forth the permissible term for which a charitable guaranteed annuity interest or a unitrust interest must be paid. Rather, the permissible term for these interests is set forth in the regulations as either a specified term of years, or the life or lives of an individual or individuals, each of whom must be living at the date of the transfer and can be ascertained at such date.

The IRS and the Treasury Department are aware of situations in which taxpayers attempt to take advantage of the regulations by using an unrelated individual's measuring life, as the term of a charitable lead trust, to artificially inflate the charitable deduction. Taxpayers select as a measuring life an individual who is seriously ill but not ''terminally ill'' within the meaning of the section 7520 regulations. Because the individual is not ''terminally ill'' as defined in the regulations, the charitable interest is valued based on the actuarial tables. These tables take into account the life expectancies of all individuals of the same age as the individual who is the measuring life, even though such individual has been carefully chosen because he or she likely will not live to an average life expectancy. When the seriously ill individual dies prematurely, the amount the charity actually receives will be significantly less than the amount on which the gift or estate tax charitable deduction was based. Conversely, the amount of the actual transfer to the remainder beneficiaries will be significantly greater than the amount subject to gift or estate tax.

These charitable lead trusts are being marketed in a package which includes the name of a seriously ill individual and access to the individual's medical records. A token payment is made to the ill individual who is serving as a measuring life. Sometimes the individual is led to believe that a charitable organization interested in the individual's particular illness will receive some benefit from the transaction. In the words of one author, ''[t]his technique (which is not strictly speaking wealth transfer planning for the terminally ill, but rather wealth transfer planning using the terminally ill) falls somewhere between ghoulish and grotesque.'' Marketing schemes that exploit the misfortunes of some for the benefit of others are contrary to public policy.

The IRS and the Treasury Department believe that this scheme is abusive and frustrates the Congressional purpose in limiting the charitable deduction to specific types of split-interest transfers.

Congress enacted the provisions regarding guaranteed annuity interests, unitrust interests, charitable remainder trusts, and pooled income funds in order to ensure that the amount the taxpayer claims as a charitable deduction reasonably correlates to the amount ultimately passing to the charitable organization. H.R. Rep. No. 413 (Part 1), 91st Cong., 1st Sess. 61 (1969); S. Rep. No. 552, 91st Cong., 1st Sess. 93 (1969). In this scheme, taxpayers choose a measuring life that ensures the amount passing to charity will be substantially less than the allowable charitable deduction. This kind of adverse selection of an unrelated measuring life to artificially inflate the charitable deduction is contrary to Congressional intent.

Explanation of Provisions

Under the proposed regulations, the permissible term for guaranteed annuity interests and unitrust interests is either a specified term of years, or the life of certain individuals living at the date of the transfer. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest or unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity or unitrust interest even if the governing instrument contains a ''savings clause'' intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. For example, a guaranteed annuity or unitrust interest that will terminate on the earlier of 30 years or 21 years after the death of the last survivor of the descendants of any grandparent of the donor living on the date of the creation of the interest will be treated as payable for a specified term of years.

The proposed regulations will allow the use of an individual's measuring life when appropriate for estate planning purposes. Thus, the regulations permit the donor, the donor's spouse, or an individual who is an ancestor of the remainder beneficiaries to be used as the measuring life. A transfer using the donor or the donor's spouse as the measuring life is a substitute for a testamentary disposition to the remainder beneficiaries. In other situations, the donor may desire to benefit an individual's heirs only after the death of the individual currently providing their support. For example, a donor may establish a charitable lead trust for the life of the donor's sibling with the sibling's children named as the remainder beneficiaries. A measuring life unrelated to the remainder beneficiaries is not appropriate for estate planning purposes and therefore is not permitted under the proposed regulations.

The proposed regulations apply to transfers to inter vivos charitable lead trusts made on or after April 4, 2000. In addition, the proposed regulations apply to transfers made pursuant to wills or revocable trusts where the decedent dies on or after April 4, 2000. Two exceptions from the application of the proposed regulations are provided in the case of transfers pursuant to a will or revocable trust executed on or before April 4, 2000. One exception is for a decedent who dies on or before the date that is 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise. The other exception is for a decedent who was on April 4, 2000 under a mental disability to change the disposition of the decedent's property, and either does not regain competence to dispose of such property before the date of death, or dies prior to the later of: 90 days after the date on which the decedent first regains competence, or 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise.

The IRS will not disallow the charitable deduction where the charitable interest is payable for the life of an individual, other than one permitted under the proposed regulations, if the interest is reformed into a lead interest payable for a specified term of years. The term of years must be determined by taking the factor for valuing the annuity or unitrust interest for the named individual's measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587. (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. In the case of inter vivos transfers, a judicial reformation must be commenced prior to the later of: (1) The date that is 6 months after the date these regulations are published as final regulations; or (2) October 15th of the year following the year in which the transfer is made. In the case of testamentary transfers, a judicial reformation must be commenced prior to the later of: (1) The date that is 6 months after the date these regulations are published as final regulations; or (2) the date prescribed by section 2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced.

An alternative to reformation may be available for any transfer made on or after April 4, 2000 and on or before the date that is 60 days after the date these regulations are published as final regulations. If a court, in a proceeding that is commenced within 6 months after these regulations are published as final regulations, declares the transfer null and void ab initio, the Service will treat such transfer in a manner similar to that described in section 2055(e)(3)(J).

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

written (a signed original and eight (8) copies) or electronic comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 29, 2000, at 10 a.m., room 4718, 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 building 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 submit comments by June 23, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 8, 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 Scott S. Landes, Office of the Chief Counsel, IRS. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, and 25 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read in part as follows:

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

Section 1.170A–6 also issued under 26 U.S.C. 170(f)(4); 26 U.S.C. 642(c)(5). * * *

Par. 2. Section 1.170A–6 is amended as follows:

1. Paragraph (c)(2)(i)(A) is amended as follows:

a. In the first sentence, the comma is removed.

b. In the second sentence, the language ''of years'' is added after the word ''term'', the language ''an individual or individuals'' is removed, and ''certain individuals'' is added in its place.

c. The third sentence is removed, and four new sentences are added in its place.

d. In the sentence beginning ''For example, the amount'', the language ''of years'' is added after the word ''term'', the language ''an individual'' is removed, and ''the donor'' is added in its place.

2. Paragraph (c)(2)(ii)(A) is amended as follows:

a. In the fifth sentence, the language ''of years'' is added after the word ''term'', ''an individual or individuals'' is removed, and ''certain individuals'' is added in its place.

b. The last sentence is removed, and four new sentences are added in its place.

3. Paragraph (e) is amended by adding four sentences to the end of the paragraph.

4. The authority citation at the end of the section is removed.

The additions read as follows:

§ 1.170A–6 Charitable contributions in trust.

* * * * *

(c) * * *

(2) * * *

(i) * * * (A) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. * * *

* * * * *

(ii) * * * (A) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.

* * * * *

(e) *Effective date.* * * * In addition, the rule in paragraphs (c)(2)(i)(A) and (ii)(A) of this section that guaranteed annuity interests and unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals, applies to transfers made on or after April 4, 2000. If a transfer is made to a trust on or after April 4, 2000 that uses an individual other than one permitted in paragraphs (c)(2)(i)(A) and (ii)(A) of this section, the trust may be reformed to satisfy this rule. As an alternative to reformation, rescission may be available for a transfer made on or before the date that is 60 days after the date these regulations are published as final regulations. See § 25.2522(c)–3(e) of this chapter for the requirements concerning reformation or possible rescission of these interests.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

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

Par. 4. Section 20.2055–2 is amended as follows:

1. Paragraph (e)(2)(vi)(*a*) is amended as follows:

a. In the third sentence, the language ''of years'' is added after the word ''term'', the language ''an individual or individuals'' is removed, and ''certain individuals'' is added in its place.

b. The fourth sentence is removed, and four new sentences are added in its place.

c. In the sentence beginning ''For example, the amount'', the language ''of years'' is added after the word ''term'', the language ''an individual'' is removed, and ''the decedent's spouse'' is added in its place.

2. Paragraph (e)(2)(vii)(*a*) is amended as follows:

a. In the sixth sentence, the language ''of years'' is added after the word ''term'', the language ''of an individual or individuals'' is removed, and ''of certain individuals'' is added in its place.

b. The last sentence is removed, and four new sentences are added in its place.

3. Paragraph (e)(3) is amended as follows:

a. The period at the end of paragraph (e)(3)(ii)(*c*) is removed, a comma is added and the word ''and'' is added after the comma.

b. A new paragraph (e)(3)(iii) is added.

The additions read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(e) * * *

(2) * * *

(vi) * * * (*a*) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. * * *

* * * * *

(vii) * * * (*a*) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.

* * * * *

(3) * * *

(iii) The rule in paragraphs (e)(2)(vi)(*a*) and (vii)(*a*) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals, is generally effective in the case of transfers pursuant to wills and revocable trusts where the decedent dies on or after April 4, 2000. Two exceptions from the application of the rule in paragraphs (e)(2)(vi)(*a*) and (vii)(*a*) of this section are provided in the case of transfers pursuant to a will or revocable trust executed on or before April 4, 2000. One exception is for a decedent who dies on or before the date that is 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise. The other exception is for a decedent who was on April 4, 2000 under a mental disability to change the disposition of the decedent's property, and either does not regain competence to dispose of such property before the date of death, or dies prior to the later of: 90 days after the date on which the decedent first regains competence, or 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise. If a guaranteed annuity interest or unitrust interest created pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000 uses an individual other than one permitted in paragraphs (e)(2)(vi)(*a*) and (vii)(*a*) of this section, and the interest does not qualify for this transitional relief, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587. (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to the later of the date that is 6 months after the date these regulations are published as final regulations, or the date prescribed by section 2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before 6 months after these regulations are published as final regulations, declares any transfer made pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000 and on or before the date that is 60 days after the date these regulations are published as final regulations, null and void *ab initio,* the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

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

Par. 6. Section 25.2522(c)–3 is amended as follows:

1. Paragraph (c)(2)(vi)(*a*) is amended as follows:

a. In the third sentence, the language ''of years'' is added after the word ''term'', the language ''a named individual or individuals'' is removed, and ''certain individuals'' is added in its place.

b. The fourth sentence is removed, and four new sentences are added in its place.

c. In the sentence beginning ''For example, the amount'', the language ''of years'' is added after the word ''term'',

the language ''an individual'' is removed, and ''the donor'' is added in its place.

2. Paragraph (c)(2)(vii)(*a*) is amended as follows:

a. In the sixth sentence, the language ''of years'' is added after the word ''term'', the language ''an individual or individuals'' is removed, and ''certain individuals'' is added in its place.

b. The last sentence is removed, and four new sentences are added in its place.

3. Paragraph (e) is amended by adding nine new sentences to the end of the paragraph.

The additions read as follows:

§ 25.2522(c)-3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(c) * * *

(2) * * *

(vi) * * * *(a)* * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.* * *

* * * * *

(vii) * * * *(a)* * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.

* * * * *

(e) *Effective date.* * * * In addition, the rule in paragraphs (c)(2)(vi)*(a)* and (vii)*(a)* of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals, applies to transfers made on or after April 4, 2000. If a transfer is made on or after April 4, 2000, that uses an individual other than one permitted in paragraphs (c)(2)(vi)*(a)* and (vii)*(a)* of this section, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587 (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.). Based on Table B(7.4), contained in IRS Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to the later of the date that is 6 months after the date these regulations are published as final regulations, or October 15th of the year following the year in which the transfer is made and must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before 6 months after these regulations are published as final regulations, declares any transfer, made on or after April 4, 2000 and on or before the date that is 60 days after the date these regulations are published as final regulations, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–7522 Filed 4–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 895; Ref: Notice No. 890]

RIN: 1512–AB86

Labeling of Flavored Wine Products (98R–317P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 890, a notice of proposed rulemaking, published in the **Federal Register** on December 28, 1999. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before May 5, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 895.* Written comments must be signed. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** soliciting comments from the public and industry on a proposal to amend the regulations to create a new standard of identity for flavored wine products (Notice No. 890, 64 FR 72612).

The comment period for Notice No. 890 closed on March 29, 2000. Prior to the close of the comment period ATF

received a request from Heaven Hill Distilleries, Inc. (''Heaven Hill'') to extend the comment period 90 days. Heaven Hill stated that it has a number of specialty products that would be affected by the proposed changes and that it needed additional time to evaluate all products concerned in order to develop an appropriate response to the issues addressed in the notice.

In consideration of the above, we believe that a reopening of the comment period is warranted. However, the comment period is being reopened for 30 days. We believe that a comment period totaling 120 days is a sufficient amount of time for all interested parties to respond.

Public Participation

You may also submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½″ x 11″ in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Disclosure

Copies of this notice, Notice No. 890, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: March 30, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–8353 Filed 4–4–00; 8:45 am]

BILLING CODE 4810–31–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–3A]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Copyright Office is seeking comments on a motion to suspend the rulemaking proceeding which would determine whether transmissions of a broadcast signal over a digital communications system, such as the internet, are exempt from copyright liability.

DATES: Written comments are due on April 17, 2000. Reply comments are due May 1, 2000.

ADDRESSES: If sent by mail, an original and ten copies of comments and reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2000, the Recording Industry Association of America, Inc. (''RIAA'') filed a petition with the Copyright Office, requesting that it initiate a rulemaking proceeding to determine whether over-the-air broadcast radio transmissions that are transmitted over the Internet are exempt from copyright liability pursuant to section 114 of the Copyright Act, title 17 of the United States Code. On March 16, 2000, the Office published a notice of proposed rulemaking in which it requested comments on the scope of the section 114(a) exemption and whether the Office should decide this question through a notice and comment proceeding. 65 FR 14227 (March 16, 2000).

In response to that notice, the National Association of Broadcasters (''NAB'') filed, on behalf of its members, a complaint against the RIAA in the U.S. District Court for the Southern District of New York seeking a declaratory ruling that a simultaneous transmission of an over-the-air broadcast of an FCC-licensed radio station over the Internet is exempt from the digital performance right in sound recordings and, consequently, is not subject to compulsory licensing under section 114 of the Act, or to discretionary licensing by individual copyright holders. Subsequently, NAB and ABC, Inc., AMFM, Inc., Bonneville International Corporation, CBS Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corporation and the Walt Disney Company (collectively ''movants'') filed a motion with the Copyright Office on March 29, 2000, requesting a suspension of the rulemaking proceeding regarding the Digital Performance Right in Sound Recordings.

In the motion, Movants suggest that the resolution of a fundamental question involving nothing more than the interpretation of a statutory provision is best left to a court of competent jurisdiction. Motion at 5. they intimate that an agency need not involve itself in such issues, at least in the first instance, unless the question raises regulatory policy concerns or falls within the unique expertise of the agency. They also argue that a rulemaking proceeding is an inadequate means for resolving such a ''fundamental'' issue, and for that reason such questions should be decided by a court.

Since the issues raised in the motion merely respond to the Office's request for comment on whether the Office should proceed to decide the question concerning the scope of the section 114(a) exemption through a notice and comment proceedings, the Office cannot address the merits of the motion until those parties with an interest in the proceeding have an opportunity to comment. Because the motion sets forth concrete arguments urging the Office defer addressing the scope of the section 114(a) exemption in a notice and comment proceeding in order to allow a court—in this instance, the U.S. District Court for the Southern District of New York—the opportunity to resolve the issue, the Office is making the motion available at this time in order to give all interested parties notice of the motion and an opportunity to comment on the arguments set forth therein.

Copies of the motion are available from the Office of the General Counsel of Copyright at the address listed in this notice. The motion has also been posted

to the Copyright Office website (http://www.loc.gov/copyright/licensing/motion-suspend.pdf). Comments on the motion to suspend are to be included in the comments a party submits on the substantive issues set forth in the initial notice of proposed rulemaking. Comments are due on April 17, 2000, and reply comments are due on May 1, 2000, the dates specified in the initial notice of proposed rulemaking, and should be included as part of any comments interested parties submit in response to the initial notice of proposed rulemaking.

Dated: March 31, 2000.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 00–8386 Filed 4–4–00; 8:45 am]

BILLING CODE 1410–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–157–0222 b; FRL–6570–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District, San Diego County, San Joaquin Valley Unified, and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern rule rescissions from the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Diego County Air Pollution Control (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District and amendments to the Ventura County Air Pollution Control District (APCD).

The intended effect of this action is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, 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. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by May 5, 2000.

ADDRESSES: Comments should be addressed 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 rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns the rule revisions listed below, submitted to EPA by the California Resources Board on the dates listed for each rule.

Sacramento Metropolitan Air Quality Management District (SMAQMD)

Rule 445, Perchloroethylene Dry Cleaning, submitted 05/18/98; rescission adopted 10/03/96.

San Diego County Air Pollution Control District (SDCAPCD)

Rule 67.8, Dry Cleaning Facilities Using Halogenated Organic Solvent, submitted 07/23/99, rescission adopted 11/04/98.

San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

Rule 4671, Perchloroethylene Dry Cleaning System, submitted 10/13/95, rescission adopted 06/15/95.

Ventura County Air Pollution Control District (VCAPCD)

Rule 74.5.2, Dry Cleaning Facilities Using Halogenated Organic Solvents, submitted 08/10/95 revision adopted 05/09/95.

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: March 15, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8150 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 236–0225b; FRL–6569–6]

Revision to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 5, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, 26 Castilian Dr., Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: The table below lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	353	Adhesives and Sealants	08/19/99	10/29/99

In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, we will withdraw the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8148 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6570–8]

Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on April 14, 2000 in the EPA Auditorium located at 401 M Street SW, Washington, DC 20460. The meeting will provide a description and summary of the proposed Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR) to be published in the **Federal Register** on April 10, 2000. The LT1FBR proposal, LT1FBR fact sheet, and LT1FBR draft implementation guidance may be obtained from *www.epa.gov/safewater* or by calling the Safe Drinking Water Hotline, telephone (800) 426-4791.

EPA is inviting all interested members of the public to attend the meeting. EPA is instituting an open door policy to allow any member of the public to attend the meeting for any length of time. Approximately 150 seats will be available for the public. Seats will be available on a first-come, first served basis.

DATES: The meeting will start at 9:00 AM on April 14 and will adjourn at 1:00 PM.

ADDRESSES: For additional information about the meeting, please contact Jeffery Robichaud (4607), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone (202) 260–7575, or by e-mail at *robichaud.jeffery@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffery Robichaud, Office of Ground Water and Drinking Water, telephone 202–260–2568.

Dated: March 29, 2000.

Janet D. Pawlukiewicz,

Acting Deputy Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–8156 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. 00–7145]

RIN No. 2127–AH61

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the upper interior impact requirements of Standard No. 201, Occupant Protection in Interior Impact, to modify the minimum distance between certain target points on vertical surfaces inside a vehicle. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a test device known as the Free Motion Headform (FMH) when it is propelled into certain target points in the vehicle interior. To ensure that tests conducted within the same vehicle do not affect each other, the standard specifies that tested targets be at least a certain distance apart; currently 150 mm (6 inches). We are proposing to expand this minimum distance to 200 mm (8 inches) for tests performed on certain vertical surfaces in order to alleviate concerns that the current distance is not large enough to prevent FMH impact overlap to nearby target points in the same vehicle. We are also proposing to add target points for pillar-like structures that do not meet the definition of ''pillar,'' *i.e.,* certain door frames and vertical seat belt mounting structures.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than June 5, 2000.

ADDRESS: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329, electronic mail ''bfan@nhtsa.dot.gov''

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Safety Problem
II. Background
  A. August 1995 Final Rule on Upper Interior Impact Protection
  B. April 1997 Final Rule
  C. Petitions for Reconsideration
  D. March 31, 1998 Letter
  E. August 1998 Meeting
  F. New Vehicle Configurations
III. Agency Proposal
  A. Minimum Distance Between Tested Targets on Pillars
  B. Pillar Surrogates
  1. Door Frames
  2. Seat Belt Mounting Structures
IV. Costs and Benefits

V. Effective Date
VI. Rulemaking Analyses and Notices
A. Regulatory Policies and Procedures
B. Executive Order 13132 (Federalism) and Unfunded Mandates Act
C. Executive Order 13045
D. Executive Order 12778
E. Regulatory Flexibility Act
F. National Environmental Policy Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Unfunded Mandates Reform Act
J. Regulation Identifier Number (RIN)
VII. Submission and Availability of Comments

I. Safety Problem

In an August 18, 1995 final rule (60 FR 43031) adding requirements for upper interior impact protection to Standard No. 201, ''Occupant Protection in Interior Impact,'' NHTSA estimated that even with air bags installed in all passenger cars, trucks, buses, and multipurpose passenger vehicles (collectively, passenger cars and LTVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, head impacts with the pillars, roof side rails, windshield header, and rear header would result in 1,591 annual passenger car occupant fatalities and 575 annual LTV occupant fatalities. We also stated that we believed such head impacts also result in nearly 13,600 moderate to critical (but non-fatal) passenger car occupant injuries (MAIS 2 or greater), and more than 5,200 serious LTV occupant injuries. (The AIS or Abbreviated Injury Scale is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. The Maximum Abbreviated Injury Scale or MAIS is the maximum injury per occupant.) In the August 18, 1995 final rule, we estimated that the new requirements would prevent 675 to 975 AIS 2–5 head injuries and 873 to 1,192 fatalities per year.

II. Background

A. August 1995 Final Rule on Upper Interior Impact Protection

The August 1995 final rule amended Standard No. 201 to require passenger cars and LTVs to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. This final rule, which required compliance beginning on September 1, 1998, significantly expanded the scope of Standard 201. Previously, the standard applied only to the portion of the vehicle interior in front of the front seat and the backs of the front seats.

B. April 1997 Final Rule

NHTSA received nine timely petitions for reconsideration of the August 1995 final rule. These petitions raised a number of issues, including: (1) Application of the new requirements to dynamic (*i.e.,* crash-deployed) head protection systems, (2) variability of test results attributed to width of the drop test calibration corridor for the FMH, (3) lead time and phase-in, (4) exclusion of certain vehicles, and (5) test procedures. We considered dynamic head protection systems to be beyond the scope of the original rulemaking and addressed the petitions filed on this issue in a final rule published in the **Federal Register** in August 1998. The remaining issues were addressed through a final rule published on April 8, 1997 (62 FR 16718). The April 1997 final rule amended Standard 201 to establish another phase-in option, allow manufacturers to carry forward credits for vehicles certified to the new requirements prior to the beginning of the phase-in period, exclude buses with a GVWR of more than 3,860 kilograms (8,500 pounds), specify that all attachments to the upper interior components are to remain in place during compliance testing, and make some clarifying changes to the test procedure.

An area of concern considered in both the petitions for reconsideration and the April 8, 1997 final rule was the appropriate minimum distance between tested target areas within the same vehicle. S8.14(c) of the Standard provides that in the event that target areas are located in near proximity to each other, no test impact may occur within 150 mm (6 inches) of any other impact. This provision forbids testing of target areas that are so close together that the FMH would impact two or more targets in a single impact and that damage resulting from the one test impact may impair countermeasures located at the nearby target area. In the petitions submitted in response to the August 1995 rule, manufacturers argued that the 150mm (6 inches) distance provided in the Standard was inadequate, particularly in those instances in which the installed countermeasure did not use padding but relied on another means. However, because the petitioners did not submit any data substantiating their claim that the 150 mm (6 inches) distance was inadequate, NHTSA rejected their request to increase this distance when it issued the April 1997 final rule.

C. Petitions for Reconsideration

Petitions for reconsideration of the April 1997 final rule were filed by the American Automobile Manufacturers Association (AAMA) and ASC, Incorporated (ASC). ASC's petition expressed concerns about the impact of the final rule on the integrated convertible roof and frame designs and requested a further amendment to the definition of ''convertible roof frame system.'' AAMA's petition requested that NHTSA reconsider and modify the final rule in reference to approach angles, moveable side glazing, multiple impacts, the procedure for locating CG–F (a reference point corresponding to the location of a front seat occupant's head), and the definition of ''forehead impact zone.''

In a notice published on April 22, 1998, (63 FR 19839) we denied these petitions for reconsideration. In regard to approach angles, NHTSA rejected AAMA's request for the exclusion of targets that cannot be tested using the existing approach angles contained in S8.13.4. We concluded that targets that cannot be tested using the existing approach angles can be relocated under the protocols found in S10(b) or S10(c). Thus, excluding the targets would not be necessary. We denied AAMA's request that hinges and latches for sunroofs and moveable side glazing be exempted from the 24 km/h (15 mph) test requirements, as we concluded that it was feasible to pad these components. The April 22 notice also explained that AAMA's concern regarding the location of CG–F had been resolved by an amendment to Standard 201 and that we believed that the organization's concerns about the proper definition of the forehead impact zone resulted from a misunderstanding of the terms of that definition. Accordingly, we declined to modify the definition.

The April 1998 notice also set forth our reasoning for rejecting AAMA's request that we reconsider our decision not to expand the minimum distance between two target areas. Without providing supporting test data, AAMA argued that the existing 150 mm (6 inches) distance was not sufficient because test damage to one target could affect the performance of a nearby target, depending on the type of countermeasure, the target location, the size of the target component, the approach angles used and the effects of chin loading on one target when another is struck. We rejected AAMA's arguments, explaining that we were satisfied that existing evidence showed that the 150 mm (6 inches) exclusion distance was adequate. As the

maximum width of the FMH is 150 mm (6 inches) and the forehead impact zone on the FMH was smaller, we concluded that the existing difference was sufficient to prevent FMH impact overlap between targets. We also noted that Standard 201 allowed testing of targets on both the right and left side of the vehicle interior and that manufacturers could use this as an opportunity to ensure that target areas were much farther apart from each other than 150 mm (6 inches) when actual testing is performed.

AAMA also requested that we consider limiting impacts to one impact per component. Again, AAMA did not submit any data indicating that limiting tests to one impact per component was necessary. We therefore rejected this request because there were no test data indicating that such a limitation was realistic and necessary.

As noted below, AAMA forwarded a letter to NHTSA on March 31, 1998 which discussed several of the issues addressed in the agency's April 22, 1998 notice denying the AAMA and ASC petitions for reconsideration. As this letter arrived shortly before the agency issued the April 22, 1998 notice, the issues raised by AAMA in this letter were not considered or discussed in that notice. They are addressed below.

D. March 31, 1998 Letter

On March 31, 1998, AAMA forwarded a letter to the agency expressing concern about the laboratory test procedure for Standard 201. In order to provide guidance and assistance to agency contractors performing compliance tests, the agency produced laboratory test procedures outlining recommended practices for performing compliance tests for different safety standards. These test procedures are not surrogates for the safety standards—they are merely used by NHTSA to facilitate testing by its contractors.

AAMA expressed its belief that multiple impacts and chin contacts during Standard 201 testing using the laboratory test procedure could create uncertainty about the ability of certain countermeasures to meet the Standard. The letter included test data from testing on prototype countermeasures which, in AAMA's view, supported its contention that multiple impacts and chin contacts compromised the ability of countermeasures to perform adequately when adjacent target points were subject to successive impacts. AAMA requested that the agency's test procedure include a restriction on testing adjacent target points and should also contain a provision stating that any test failure should be carefully scrutinized to determine if and when chin contact occurred. If chin contact occurred, AAMA suggested that the test procedure require that the test be run again with the headform rotated to a new position where early chin contact would not occur.

E. August 1998 Meeting

On August 19, 1998, AAMA staff persons and representatives of AAMA member companies met with NHTSA officials to discuss ongoing concerns regarding test issues in Standard 201. These issues included multiple impacts on the same component, headform chin and cheek contact during HIC calculations, and window position during testing. In this meeting, AAMA members displayed samples of prototype A- and B-pillar trim pieces being developed to meet Standard 201. They also presented data generated from tests in which individual trim components were subjected to multiple impacts. The trim samples showed that instead of using padding as a countermeasure, AAMA members were developing energy absorbing plastic trim composed of conventional plastic trim with ribs on the reverse side. Test data submitted by Ford showed the results of a series of impacts on simulated pillar structures in which one test impact was followed by a second test impact 150 mm (6 inches) below the first. The trim used in these tests was constructed of plastic with a smooth facing and ribs cast into the backside. Data presented by Ford showed that trim that had been subjected to impacts at the upper location suffered a degradation in performance at the lower impact site ranging from 7.3 percent to 32.1 percent. On average, when a trim component equipped with countermeasures was tested at the lower location after an upper location of the same trim had been tested, the HIC scores were 19.2 percent higher than those resulting from impacts at the same point into identical trim components that had never been impacted. The Ford data also showed that the rib structures on the backside of the trim were deformed up to six inches below the impact area. Representatives of AAMA, AIAM, Chrysler, GM, Ford and Mitsubishi indicated that secondary impacts by the chin and lower portion of the FMH after primary impacts by the FMH forehead impaired the ability of target points on or near the secondary impact to meet the requirements of the Standard when subjected to testing.

F. New Vehicle Configurations

As light trucks continue to grow in popularity and consumers expect greater versatility from their vehicles, manufacturers are responding by introducing designs that differ from the traditional sedan. A number of manufacturers are now producing pickup trucks with 3- and 4-door designs which, unlike the established ''crew cab'' design, do not have pillars between doors. In these vehicles, the rearmost door is hinged at the rear rather than the front. The front and the rear door latch together without an intervening pillar. A similar design has also recently been introduced in a 3-door coupe manufactured by Saturn. If this design is successful in the marketplace, other passenger vehicles with this feature may appear in the future. In these vehicles, the frames of the two doors, when closed and latched, form a structure that presents a surface that may be viewed as the structural equivalent of a pillar. However, because these door frames are not pillars as defined in Standard 201, they are not subject to the requirements of the Standard.

We are also aware of other designs used in soft top light utility vehicles that involve the use of a vertical structure to provide an attachment point for the upper anchorage of a lap and shoulder belt. This structure, which must be relatively stiff in order to ensure the stability of the belt anchorage, is necessarily located near the head of the occupant of the seating position for which the belt is provided. However, because this structure does not support the roof of the vehicle and is not a stiffener or a roll bar, it does not, by definition, have any target areas that would be subject to the requirements of Standard 201.

We are concerned about the potential safety consequences of these new designs. Because these door frames and seat belt mounting structures do not fit within the existing definitions of ''pillar,'' ''roll bar'' or ''stiffener'' found in Standard 201, there are no target areas located on these structures and they need not meet the head impact protection criteria. However, these door frames and seat belt mounting structures provide the same potential for head injury as a pillar, roll bar, or stiffener.

III. Agency Proposal

After consideration of the issues raised by the petitions for reconsideration, the March 31, 1998 AAMA letter, and the information presented in the August 1998 meeting, the agency has decided to propose amendments to Standard 201 to modify the existing test procedure. The agency proposes to enlarge the minimum distance between pillar target areas to

prevent testing to areas that suffered damage from an impact overlap from a previous test impact, and to include pillar surrogates within the standard. To address the former, we are proposing to amend S8.14 to add a 200 mm (8 inches) minimum spacing exclusion for certain vertically oriented target locations to prevent FMH impact overlap from earlier impacts impairing the performance of the vehicle when other target points are tested. To address the performance of newer vehicle designs with structures that are functionally equivalent to pillars, roll bars and braces, we are proposing to add new sections to S3 and S10 defining pillar surrogates and establishing procedures for locating target areas on those pillar surrogates.

A. Minimum Distance Between Tested Targets on Pillars

The head impact protection provisions of Standard 201 set minimum performance requirements for vehicle interiors by establishing target areas within the vehicle that must be properly padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. Compliance with these performance requirements is tested by launching the FMH within a specified angle range at either 18 km/h or 24 km/h (12 mph or 15 mph) at a specific target area. Target locations are identified through use of the procedures contained in S10 of the Standard. Some of these targets are located on vertically oriented surfaces such as the A-pillar (S10.1), B-Pillar (S10.2), rearmost pillar (S10.4) and, if they exist, other pillars (S10.3). Therefore, when the FMH is launched at a target area located on one of these pillars and the forehead impact area contacts the intended target, the chin or lower portions of the FMH may contact another target area lower on the same pillar.

As Standard 201 sets performance requirements for a number of points and areas within the vehicle, S8.14(a) provides that, subject to certain limitations, a vehicle being tested may be impacted multiple times. S8.14(b), which was included in the standard to allow sufficient time for resilient countermeasures to recover after impacts, provides that impacts within 300mm (12 inches) of each other may not occur less than 30 minutes apart. S8.14(c) specifies that no impact may occur within 150 mm (6 inches) of any other impact. The latter provision is intended to prevent damage caused by the overlap of one impact from impairing the performance of countermeasures for a nearby target in a second impact. The selection of the 150mm (6 inches) distance was based on the maximum width of the FMH.

The 150 mm (6 inches) distance currently in S8.14(c) does not, however, address the potential impact overlap damage caused by the height of the FMH rather than its width. Information and test data presented to the agency by AAMA and others indicate that contact between the lower portions of the FMH and target points below a test target on vertically oriented surfaces could substantially impair the performance of countermeasures on or near those lower target points. For vertical pillar targets, increasing the 150mm (6 inches) minimum spacing distance to 200 mm (8 inches) would, in our view, preclude impact overlap damage caused by impacts to target points below the intended target. Our belief is based on the fact that the characteristics of the principal structure of the FMH—the metal skull—are such that the lowest point of the device likely to contact the interior in a test, is less than 200 mm (8 inches) from any point within the forehead impact zone. As contact between the forehead impact zone and the intended target area is required in a valid test, the proposed 200 mm (8 inches) distance should be sufficient to ensure that target areas located in areas impacted by earlier tests will not be subject to testing.

We believe that this proposed spacing exclusion is consistent with our past actions in creating Standard 201. While we are concerned that multiple impacts can and will occur in the event of a crash, we have never required that a target point be subjected to multiple impacts or that targets located in or over an area already tested be tested again. As noted above, S8.14, which we inserted in Standard 201 after consideration of data developed using foam countermeasures, already provided that impacts may not occur within 150 mm (6 inches) of each other. Because we believed that resilient foam would be used to meet Standard 201's requirements, S8.14 also specifies that impacts located within 300 mm (12 inches) of each other may not occur less than 30 minutes apart. The proposal to create a similar exclusion for vertically oriented surface target locations less than 200 mm (8 inches) apart simply recognizes that materials other than resilient foam may be used to protect occupants and that these materials may perform differently while providing an equivalent level of safety.

The proposed exclusion would not result in any decrease in safety. We wish to emphasize that excluding target locations located on vertical components that are less than 200 mm (8 inches) apart does not mean that an excluded point will not be subject to testing. If, for example, the B-pillar target point known as BP2 is located within 200 mm (8 inches) of another B-pillar target location such as BP1, BP2 would be excluded only if the BP1 on the same side of the vehicle had been impacted in a test. Because pillar target locations are available on both sides of the vehicle, we believe that by alternately locating targets on opposite sides of the vehicle, all target locations are likely to be available for testing. In the event that target locations are so near to each other that the use of alternate sides of a vehicle does not provide access to all target locations, additional vehicles may be used for testing. Adoption of the proposed exclusion would therefore provide manufacturers with some assurance that target locations contacted by the FMH during a test of another location on the same side of the vehicle would not be subjected to a second impact. At the same time, we would retain the ability to test all pillar target points by using both sides of the vehicle for compliance tests.

B. Pillar Surrogates

The target location requirements currently specified in Standard 201 envision vehicles having more than one door on a side will also have a pillar between those doors. However, as noted above, there are a number of recent designs that do not conform to that expectation. These vehicles, including the Saturn 3-door coupe and pickup trucks with 3- and 4-door configurations, have more than one door on a side but do not have a pillar between the doors. In these designs, the door frames where the two doors meet are, from a safety standpoint, the equivalent of a pillar. The door frames are stiff like pillars and are located close to an occupant's head. If proper countermeasures are not provided on these structures, occupants of these vehicles would have less protection in a crash than those occupying more conventional vehicles. The agency is also aware of other vehicle designs in which stiff structures that are not pillars, roll bars, or braces are used as mounts for upper belt anchorages. Like the door frames discussed above, these structures provide the same safety risks for occupants as pillars do, but are not currently covered by the Standard.

1. Door Frames

We are proposing to add two new sections to S10 of Standard 201 that will specify target locations on frames of

pairs of adjacent doors that are not separated by an intervening pillar. Specifying these target locations would necessitate the addition of definitions of ''door frame'' and ''other door frame'' to S3. The proposed definitions of ''door frame'' and ''other door frame'' encompass the structure rearward of the daylight opening of a forward door and the structure forward of the daylight opening of a rear door where the doors are adjacent side doors with opposing hinges that latch together without engaging or contacting an intervening pillar. As defined in the proposal, ''door frame'' is distinguished from ''other door frame'' by the relationship of each of these structures to other pillars. A ''door frame'' refers to the perimeter structure of doors located rearward of an A-pillar and forward of any other pillars, while ''other door frame'' refers to the perimeter structure of doors rearward of the B-pillar.

The proposed target location procedure for these door frames takes into account that seat belt anchorages may be located on these door frames and that the frames themselves are two structures. We are proposing that four targets be located on the door frames.

The first of these, which would be known as DF1, would be located in a fashion similar to that presently used for locating the B-Pillar target known as BP1. We propose that DF1 be located on a reference point, DFR. Under the proposal, DFR would be located on the vehicle interior at a point along the intersection of the interior roof surface and a transverse vertical plane tangent to the rear edge of the forward door when the adjacent rear door is in the open position. The location of DFR would be determined by finding the midpoint, along the intersection line, between the nearest edge of the upper roof and the point at which a horizontal plane passing through the highest point of the highest adjacent daylight opening intersects with the transverse vertical plane and the vehicle interior. We propose that the second door frame target, DF2, be located at any point on any seat belt anchorage located on the door frame. Target DF3 would be located on the interior surface of the door frame. As proposed, DF3 would be located in the horizontal plane midway between DFR and a horizontal plane passing through the lowest point of the lowest adjacent daylight opening and would be the point on the door frame that is closest to the head center of gravity of an occupant in the seating position whose seating reference point is immediately forward of the transverse vertical plane tangent to the rear edge of the forward door. To protect occupants in any seats whose seating reference point is immediately rearward of the transverse vertical plane tangent to the rear edge of the forward door, we are proposing to locate another target, DF4, at a point on the interior surface of the door frame. As proposed, DF4 would be located in the horizontal plane midway between DF3 and the horizontal plane passing through the lowest point of the lowest daylight opening of an adjacent door. DF 4 would be the point inside this plane that is closest to the head center of gravity of an occupant in the seat whose seating reference point is immediately rearward of the transverse vertical plane tangent to the rear edge of the forward door.

For ''other door frame'' targets, we are proposing a target location procedure similar to that already being used for the two existing other pillar targets. An ''other door'' reference point, ODR, is a point on a line formed by the intersection of the roof interior surface and a transverse vertical plane passing through the vertical center line of the width of the door frame, as viewed laterally with the doors closed, and is the midpoint between the nearest edge of the ''upper roof'' and the point at which a horizontal plane passing through the highest daylight opening of the adjacent door intersects with the vertical center line of the width of the door frame. If no seat belt anchorage is located on the door frame, ODR serves as target OD1. If a seat belt anchorage is located on the door frame, target OD1 is located on the anchorage. The second other door frame target, OD2, is located on the interior surface of the door frame inside the longitudinal horizontal plane midway between the horizontal planes passing through the ODR and the lowest points in the daylight openings of the door frames. As proposed, OD2 would be that point within this plane and on the vertical center line of the width of the door frame, as viewed laterally with the doors closed.

The proposed procedure for locating these target areas is intended to be similar to that used for locating B-pillar and other pillar targets. The same approach angles are specified for the door frame and other door frame targets as are currently employed for the B-pillars and other pillars. We also note that as is the case with the existing specifications for targets that are seat belt anchorages, the vertical approach angle specified for seat belt anchorages differs from that for other targets on the same pillar or door frame. The selection of the approach angle for anchorage targets reflects the agency's judgement that such angles are more appropriate for anchorages—which commonly project above the nominal surface of a pillar or door frame. Further, in specifying distinct approach angles for seat belt anchorages, NHTSA intends that the approach angles specified generally for pillars and door frames do not apply to anchorage targets.

We have tentatively concluded that these proposed target procedures are the most appropriate target locating procedures for door frames that are, from a safety perspective, similar to B-pillars and other pillars. Nonetheless, we may also consider alternative target location schemes, including simply providing that the entire interior surface of the door frame should be considered to be a target location. We also note that because the door frames are two separate components, that it may be appropriate to specify additional target locations to adequately ensure that both the front and the rear frames provide adequate protection, particularly in light of the fact that the present proposal does not locate any target on the rear door frame at the upper portion of the frame. Unlike the case of a B-pillar, the trim and the countermeasures on door frames will not be a single component, but two separate components. These separate components are, in our view, likely to be less susceptible to damage caused by other impacts. Therefore, we believe that the minimum distances between targets now specified in S8.14 as well as the current proposal to extend these distances for pillar targets may not be necessary in the case of door frames.

We request that those submitting comments in response to this proposal provide their views on the following issues: Is the proposed location procedure for DF1 appropriate? Are the proposed location procedures for the other door frame target locations appropriate? Should additional target locations be specified to assure the performance of countermeasures located in the rear door frame? Is the proposed definition of ''door frame'' appropriate?

2. Seat Belt Mounting Structures

Certain vehicle designs, particularly those with removable or convertible tops, may provide manufacturers with few options for mounting and locating upper anchorages for the shoulder portion of Type II safety belts. In those instances in which it is not possible or desirable to locate this upper anchorage on the seat itself and the particular design does not readily offer another mounting location, the manufacturer may choose to incorporate a dedicated structure into the vehicle to serve as the shoulder belt anchorage. If this structure, which by necessity must be stiff and relatively near the occupant

served by the belt, does not fit within the definition of pillar, roll bar, or stiffener, currently contained in Standard 201, it need not meet the Standard's requirements.

We are proposing to amend S3 to include a definition of ''Seat Belt Mounting Structure'' and to amend S10 to add a new target location procedure for placing target areas on these structures. The proposed definition describes a ''Seat Belt Mounting Structure'' as follows:

> Seat Belt Mounting Structure means a component of the vehicle body or frame, including trim, to which an upper seat belt anchorage conforming to the requirements of S4.2.1. and S4.3.2 of Standard No. 210 is attached. The term does not include a pillar, roll bar, brace or stiffener, side rail, seat, or part of the roof.

We tentatively conclude that this definition would provide adequate guidance to manufacturers in identifying which components are covered by the Standard.

We are proposing to locate three target areas on seat belt mounting structures in an effort to maintain consistency with the target locations for pillars. This is appropriate because, in the agency's view, pillars most closely approximate seat belt mounting structures in terms of safety and safety countermeasures. However, we are proposing that fewer target locations be specified for these structures than are presently specified for testing pillars. Our view is that manufacturers are likely only to use a purpose-built seat belt anchorage structure in those instances in which the design of the vehicle precludes more conventional alternatives such as the pillars or seat. We also believe that such structures are not likely to be integrated into roofs, which are usually not as rigid or strong as other areas of the vehicle such as the sides or floors. Therefore, our proposal does not call for locating any targets higher than the head center of gravity of occupants in nearby seating positions unless the seat belt anchorage itself is higher.

We propose that the first target point, known as SB1, be located on the seat belt anchorage attached to the seat belt mounting structure. The remaining two target points, SB2 and SB3, would be located in reference to the head CG of occupants nearest to the seat belt mount in question. We propose that target SB2 be the point on the nominal surface of the seat belt mounting structure that is closest to CG–F2 of the nearest front outboard designated seating position and is on the intersection of the seat belt mounting structure and the horizontal plane passing through that CG–F2. If the seating reference point of any rear outboard seating position is forward of the transverse vertical plane passing through the vertical center line of the seat belt mounting structure, SB2 would be the point that is closest to the CG–R nearest the seat belt mounting structure and is at the intersection of the seat belt mounting structure and the horizontal plane passing through that CG–R. The proposed location for SB3 is fixed in a similar fashion. SB3 is the point nearest to CG–R that is 225 mm (8.6 inches) below the intersection of the surface of the seat belt mounting structure and the horizontal plane passing through the CG–R of the designated seating position whose seating reference point is rearward of the transverse vertical plane passing through the vertical center line of the seat belt mounting structure.

The proposal also contains approach angles for the seat belt mounting structures that are similar to the approach angles currently employed for B-pillar targets. We have tentatively concluded that these approach angles are appropriate because the specification of single approach angle or a narrow range of approach angles would preclude testing of the proposed target areas. We also note that, as is the case with the existing specifications for targets that are seat belt anchorages, the vertical approach angle specified for seat belt anchorages differs from that for other targets on the seat belt mounting structure. It is the agency's judgement that such angles are more appropriate for anchorages—which commonly project above the nominal surface of a seat belt mounting structure. Further, in specifying an approach angle for anchorage targets, it is the agency's intention that the approach angles specified generally for pillars and door frames do not apply to anchorage targets.

While the location of the seat belt anchorage attached to such a structure will be fixed, to some extent, by the requirements of Standard 210, Seat Belt Assembly Anchorages, the remaining characteristics of such structures are not well known. Since the ability to test target areas on seat belt mounting structures may be limited by their configuration, i.e., the ability to properly strike a target area with the forehead impact zone of the FMH, we tentatively conclude that specifying a range of approach angles is in the best interest of safety.

We also tentatively conclude that the definition of a seat belt mounting structure allows identification of the target locations and that the proposed target locations are both appropriate and readily identified. However, we ask for comments on the definition and its utility. Comments on the proposed location of the targets and the procedure used to locate them would also, in our view, assist us in formulating an appropriate final rule.

IV. Costs and Benefits

The proposed amendments would change performance requirements, test procedures and revise definitions to include structures that are the equivalents to the pillars that are already subject to Standard 201's requirements. Because these structures, door frames and seat belt mounting structures, are very similar in design, construction and location to existing pillars, we have decided that the cost and benefit methodology prepared for the August 1995 final rule will not change. The four proposed door frame target points are substitutes for the existing four B-pillar targets points that would be located on the B-pillar that the door frames replace. Similarly, the three proposed seat belt mounting structure target points would be in-place of, rather than in addition to, existing targets such as those located on the rear pillar (RP1, RP2), rear header (RH) and rear side rail (SR3) target points not present in some soft top sport utility vehicles.

Based on data in the June 1995 Final Economic Assessment on Upper Interior Head Protection, it is estimated that the cost of padding the two B-pillars of a passenger car and light truck would be $5.80/vehicle and $9.71/vehicle, respectively. This is the cost of the padding material countermeasure. Adjusting these figures to 1998 values and for the slightly greater amount of padding that would be needed for LTVs, the average cost per vehicle is estimated to be not more than $6 per vehicle for 3-door passenger cars similar to the 3 door Saturn sedan and $10 per 4-door crew cab LTV. A 3 door crew cab LTV would already have one padded B-pillar so costs would be less, possibly as low as $5 per vehicle. For soft top sport utility vehicles with 3 newly target points per vertical belt mounting structure, the cost per vehicle would be less than that required to install countermeasures on two B-pillars—approximately $6–$10 per vehicle.

The addition of the proposed new door frame and seat belt mounting structure targets would, in our view, not require further benefits analysis. Our original June 1995 Final Economic Assessment did not envision pillarless designs such as 3-door coupes, crew cab LTVs or soft top LTVs with seat belt mounting structures as being part of the U.S. vehicle fleet. The overall cost/

benefit calculations performed in that assessment assumed that all vehicles had conventional pillars, roll bars, or stiffeners. The current proposal brings vehicles without conventional pillars, roll bars, or stiffeners within the scope of Standard 201 and, as noted above, at approximately the same cost as other vehicles. Therefore, our earlier benefits analysis is merely brought up to date by the inclusion of these vehicles in Standard 201.

V. Effective Date

The agency is proposing that the final rule become effective 180 days after it is published.

VI. Rulemaking Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document proposes to amend 49 CFR part 571.201 by modifying existing test procedures to increase the minimum distance between tested targets. It would also specify targets on certain door frames and seat belt mounting structures not previously covered by the Standard. The agency notes that these structures, i.e., door frames and freestanding seat belt mounting structures, are surrogates for pillars and are not, to NHTSA's knowledge, present in vehicles with more conventional configurations. In particular, seat belt mounting structures appear to be used only in soft top vehicles where no roof structure, pillars (except the A pillar), roll bars or stiffeners exist.

The agency's previous economic analysis was based on the assumption that all vehicles would have conventional pillar layouts. As a result of that assumption, vehicles that actually had pillar surrogates were mistakenly included in that analysis and were treated, for the purpose of estimating costs, as though they had conventional pillar layouts. The number of pillars that these vehicles were assumed to have is the same as the total number of pillars and pillar surrogates that they actually have.

The agency has tentatively concluded that the costs of installing countermeasures on these pillar surrogates will not differ appreciably from installing the same countermeasures on pillars. Thus, despite the erroneous assumptions, the previous economic analysis correctly estimated the compliance costs for vehicles with pillar surrogates, and included those costs in the overall estimate of the costs of the upper interior head protection requirements. Since the economic costs of extending those requirements to vehicles with surrogate pillars have already been accounted for, we believe that the economic impacts of this proposal do not warrant further regulatory evaluation.

B. Executive Order 13132 (Federalism) and Unfunded Mandates Act

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. NHTSA has determined that the amendment does not have sufficient federalism implications to warrant application of the requirements of section 6 of the Executive Order to this rule.

C. Executive Order 13045

Executive Order 13045 (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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, safety or health risks having a disproportionate impact on children.

D. Executive Order 12778

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certifies that this

proposal would not have a significant economic impact on a substantial number of small entities. We estimate that there are at most five small manufacturers of passenger cars in the U.S., producing a combined total of at most 500 cars each year. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production each year.

The primary cost effect of the proposed requirements would be on manufacturers of passenger cars and LTVs. Final stage manufacturers, those who use incomplete vehicles produced by larger manufacturers to produce specialty products, are generally small businesses. However, NHTSA believes that the proposed requirements would not be burdensome for final stage manufacturers. The amendments proposed in this rulemaking impose additional mandatory requirements only on those vehicles with specific door configurations or specialized seat belt mounting structures. We note that vehicles with these configurations presently represent only a small percentage of annual production. Further, a final stage manufacturer could test, or could sponsor a test, of a padded component outside of the vehicle on a test fixture, to the extent such testing may be needed to support certification. Manufacturer associations could also sponsor generic tests to determine the amount and type of padding or design needed for basic structures that would be used by a number of final stage manufacturers, to reduce certification costs.

Other entities which would qualify as small businesses, small organizations and governmental units would be affected by this rule to the extent that they purchase passenger cars and LTVs. They would not be significantly affected, since the potential cost increases associated with this action should only slightly affect the purchase price of new motor vehicles. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

F. National Environmental Policy Act

We have analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not propose any new information collection requirements.

H. National Technology Transfer And Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. We note that there are no available voluntary consensus standards that are equivalent to Standard 201.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VII. Submission and Availability of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESS**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESS**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business

information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESS**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
B. On that page, click on ''search.''
C. On the next page (http://dms.dot.gov/search/), type in the last four digits of the docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
D. On the next page, which contains docket index and summary information for the docket you selected, click on the desired comments. You may view or download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

2. Section 571.201 would be amended by adding, in alphabetical order, definitions of Door Frame and Seat Belt Mounting Structure to S3; by revising S8.13.4, S8.13.4.2(b)(2), S8.14, and S10(a) through (b); and by adding S8.13.4.1(e) through (h), S10.14, S10.15 and S10.16 to read as follows:

S3. * * *

* * * * *

Door Frame means the rearmost perimeter structure, including trim but excluding glass, of the forward door and the forwardmost perimeter structure, including trim but excluding glass, of the rear door of a pair of adjacent side doors that:

(a) Have opposing hinges;

(b) Latch together without engaging or contacting an intervening pillar;

(c) Are forward of any pillar other than the A-pillar on the same side of the vehicle; and

(d) are rearward of the A pillar.

* * * * *

Other Door Frame means the rearmost perimeter structure, including trim but excluding glass, of the forward door and the forwardmost perimeter structure, including trim but excluding glass, of the rear door of a pair of adjacent side doors that:

(a) Have opposing hinges;

(b) Latch together without engaging or contacting an intervening pillar; and

(c) Are rearward of the B-pillar.

* * * * *

Seat Belt Mounting Structure means a component of the vehicle body or frame, including trim, that has an upper seat belt anchorage conforming to the requirements of S4.2.1. and S4.3.2 of Standard No. 210 attached to it and that is not a pillar, roll bar, brace or stiffener, side rail, seat, or part of the roof.

* * * * *

S8.13.4 *Approach Angles.* The headform launching angle is as specified in Table 1. For components for which Table 1 specifies a range of angles, the headform launching angle is within the limits determined using the procedures specified in S8.13.4.1 and S8.13.4.2, and within the range specified in Table 1, using the orthogonal reference system specified in S9.

TABLE 1.—APPROACH ANGLE LIMITS

[In degrees]

Target component	Horizontal angle	Vertical angle
Front Header	180	0–50
Rear Header	0 or 360	0–50
Left Side Rail	270	0–50
Right Side Rail	90	0–50
Left Sliding Door Track	270	0–50
Right Sliding Door Track	90	0–50
Left A-Pillar	195–255	−5–50
Right A-Pillar	105–165	−5–50
Left B-Pillar	195–345	−10–50
Right B-Pillar	15–165	−10–50
Left Door Frame	195–345	−10–50
Right Door Frame	15–165	−10–50
Other Left Pillars	270	−10–50
Other Right Pillars	90	−10–50
Other Left Door Frame	270	−10–50
Other Right Door Frame	90	−10–50
Left Rearmost Pillar	270–345	−10–50
Right Rearmost Pillar	15–90	−10–50
Upper Roof	Any	0–50

TABLE 1.—APPROACH ANGLE LIMITS—Continued

[In degrees]

Target component	Horizontal angle	Vertical angle
Overhead Rollbar	0 or 180	0–50
Brace or Stiffener	90 or 270	0–50
Left Seat Belt Mounting Structure	195–345	−10–50
Right Seat Belt Mounting Structure	15–165	−10–50
Seat Belt Anchorages	Any	0–50

* * * * *

S8.13.4.1 Horizontal approach angles for headform impacts.

* * * * *

(e) *Left door frame horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the left seat and the left door frame. The maximum horizontal approach angle for the left door frame equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 270 degrees, whichever is greater.

(2) Locate a line formed by the shortest horizontal distance between CG-R for the left seat and the left door frame. The minimum horizontal approach angle for the left door frame equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise.

(f) *Right door frame horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the right seat and the right door frame. The minimum horizontal approach angle for the right door frame equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 90 degrees, whichever is less.

(2) Locate a line formed by the shortest horizontal distance between CG–R for the right seat and the right door frame. The maximum horizontal approach angle for the right door frame equals the angle between that line and the X-axis of the vehicle measured counterclockwise

(g) *Left seat belt mounting structure horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the left seat and the left seat belt mounting structure. The maximum horizontal approach angle for the left seat belt mounting structure equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 270 degrees, whichever is greater.

(2) Locate a line formed by the shortest horizontal distance between CG–R for the left seat and the left seat belt mounting structure. The minimum horizontal approach angle for the left seat belt mounting structure equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise.

(h) *Right seat belt mounting structure horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the right seat and the right seat belt mounting structure. The minimum horizontal approach angle for the right seat belt mounting structure equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 90 degrees, whichever is less.

(2) Locate a line formed by the shortest horizontal distance between CG–R for the right seat and the right seat belt mounting structure. The maximum horizontal approach angle for the right seat belt mounting structure equals the angle between that line and the X-axis of the vehicle measured counterclockwise

S8.13.4.2 Vertical approach angles.

* * * * *

(b) * * *

(2) For all pillars except A-pillars and all door frames and seat belt mounting structures, keeping the forehead impact zone in contact with the target, rotate the FMH downward by 10 degrees for each target to determine the maximum vertical angle.

S8.14 Multiple impacts.

(a) A vehicle being tested may be impacted multiple times, subject to the limitations in S8.14(b), (c) and (d).

(b) As measured as provided in S8.14(e), impacts within 300 mm of each other may not occur less than 30 minutes apart.

(c) As measured as provided in S8.14(e), no impact may occur within 150 mm of any other impact.

(d) As measured as provided in S8.14(e), no impact on any pillar or vertical component of a roll bar, brace, stiffener, door frame or seat belt mounting structure may occur within 200 mm of any other impact.

(e) For S8.14(b), S8.14(c), and S8.14(d), the distance between impacts is the distance between the centers of the target circle specified in S8.11 for each impact, measured along the vehicle interior.

* * * * *

S10 * * *

(a) The target locations specified in S10.1 through S10.16 are located on both sides of the vehicle and, except as specified in S10(b), are determined using the procedures specified in those paragraphs.

(b) Except as specified in S10(c), if there is no combination of horizontal and vertical angles specified in S8.13.4 at which the forehead impact zone of the free motion headform can contact one of the targets located using the procedures in S10.1 through S10.16, the center of that target is moved to any location within a sphere with a radius of 25 mm, centered on the center of the original target, which the forehead impact zone can contact at one or more combination of angles.

* * * * *

S10.14 *Door frame targets.*

(a) *Target DF 1.* Locate the point (Point 21) on the vehicle interior at the intersection of the horizontal plane passing through the highest point of the forward door opening and a transverse vertical plane (Plane 32) tangent to the rearmost edge of the forward door, as viewed laterally with the adjacent door open. Locate the point (Point 22) at the intersection of the interior roof surface, Plane 32, and the plane, described in S8.15(h), defining the nearest edge of the upper roof. The door frame reference point (Point DFR) is the point located at the middle of the line from Point 21 to Point 22 in Plane 32, measured along the vehicle interior surface. Target DF1 is located at Point DFR.

(b) *Target DF2.* If a seat belt anchorage is located on the door frame, Target DF2 is located at any point on the anchorage.

(c) *Target DF3.* Locate a horizontal plane (Plane 33) which intersects Point DFR. Locate a horizontal plane (Plane 34) which passes through the lowest point of the adjacent daylight opening forward of the door frame. Locate a

horizontal plane (Plane 35) half-way between Plane 33 and Plane 34. Target DF3 is the point located in Plane 35 and on the interior surface of the door frame, which is closest to CG–F2 for the nearest seating position.

(d) *Target DF4.* Locate a horizontal plane (Plane 36) half-way between Plane 34 and Plane 35. Target DF4 is the point located in Plane 36 and on the interior surface of the door frame which is closest to CG–R for the nearest seating position.

S10.15 *Other door frame targets.*

(a) *Target OD1.*

(1) Except as provided in S10.15(a)(2), target OD1 is located in accordance with this paragraph. Locate the point (Point 23), on the vehicle interior, at the intersection of the horizontal plane through the highest point of the highest adjacent door opening or daylight opening (if there is no adjacent door opening) and the center line of the width of the other door frame, as viewed laterally with the doors in the closed position. Locate a transverse vertical plane (Plane 37) passing through Point 23. Locate the point (Point 24) at the intersection of the interior roof surface, Plane 37 and the plane, described in S8.15(h), defining the nearest edge of the upper roof. The other door frame reference point (Point ODR) is the point located at the middle of the line between Point 23 and Point 24 in Plane 37, measured along the vehicle interior surface. Target OD1 is located at Point ODR.

(2) If a seat belt anchorage is located on the door frame, Target OD1 is any point on the anchorage.

(b) *Target OD2.* Locate the horizontal plane (Plane 38) intersecting Point ODR. Locate a horizontal plane (Plane 39) passing through the lowest point of the daylight opening forward of the door frame. Locate a horizontal plane (Plane 40) half-way between Plane 38 and Plane 39. Target OD2 is the point located on the interior surface of the door frame at the intersection of Plane 40 and the center line of the width of the door frames, as viewed laterally, with the doors in the closed position.

S10.16 *Seat belt mounting structure targets.*

(a) *Target SB1.* Target SB1 is located at any point on the seat belt anchorage mounted on the seat belt mounting structure.

(b) *Target SB2.* Locate a horizontal plane (Plane 41), containing either CG–F2 or CG–R, as appropriate, for any outboard designated seating position whose seating reference point, SgRP, is forward of and closest to, the vertical center line of the width of the seat belt mounting structure as viewed laterally. Target SB2 is located on the seat belt mounting structure and in Plane 41 at the location closest to either CG–F2 or CG–R, as appropriate.

(c) *Target SB3.* Locate a horizontal plane (Plane 42), containing CG–R for any outboard designated seating position rearward of the forwardmost designated seating position or positions whose seating reference point, SgRP, is rearward of and closest to, the vertical center line of the width of the seat belt mounting structure, as viewed laterally. Measuring along the nominal surface of the seat belt mounting structure locate a horizontal plane (plane 43) 225 mm below Plane 42. Target SB2 is located on the seat belt mounting structure and in Plane 43 at the location closest to CG–R, as appropriate.

* * * * *

Issued on March 28, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–8008 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000320077–0077–01; I.D. 021500C]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking to announce that it is considering technical changes to the requirements for turtle excluder devices (TEDs). NMFS proposes to modify the size of the TED escape opening, modify or decertify hooped hard TEDs and weedless TEDs, and change the requirements for the types of flotation devices allowed. NMFS is also considering modifications to the leatherback conservation zone regulations to provide better protection to leatherback turtles. The proposed measures are necessary to effectively protect all life stages and species of sea turtles.

DATES: Written comments (see **ADDRESSES**) will be accepted through May 5, 2000.

ADDRESSES: Written comments on this action and request for copies of the 1999 TED opening evaluation report and the Leatherback Contingency Plan should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtles (*Chelonia mydas*) are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities has been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR Part 223. The incidental taking of turtles during shrimp or summer flounder trawling is excepted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR Part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the Southeastern United States. (Atlantic Area and Gulf Area) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED–the Parker soft TED.

TEDs incorporate an escape opening, usually covered by a webbing flap, that allow sea turtles to escape from trawl nets. To be certified by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during experimental TED testing. TEDs must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are ≥35 inches (≥89 cm) in width and ≥12 inches (≥30) in height. In the Gulf Area the requirements are ≥32 inches (81 cm) in width and ≥10 inches (≥25 cm) in height.

NMFS TED Opening Study

The proportion of large, mature loggerheads and greens that are documented to strand on coastal beaches appear to be greater than the proportion that would be expected given the size distribution of sea turtles found in nearshore waters (Turtle Expert Working Group, in preparation). The disparity in size may be a result of the minimum size requirement for TED openings which only allows smaller turtles to escape. NMFS (Epperly and Teas, 1999; copies available, see **ADDRESSES**) conducted analyses of the size of TED openings in relation to the carapace width and body depth of stranded sea turtles and concluded that body depth, not carapace width, was a factor in the turtle's ability to exit the TED opening. Up to 47 percent of the body depths for stranded loggerheads and 7percent for green turtles exceeded the minimum height requirements for TED openings.

Leatherback Contingency Plan

NMFS in cooperation with the U.S. Fish and Wildlife Service, South Carolina, Georgia, and Florida developed the Leatherback Contingency Plan (copies available, see **ADDRESSES**) to reduce leatherback mortality in shrimp trawls. Leatherback sea turtles are too large to be excluded through the standard size TED opening; when mature they can weigh between 600 and 1300 pounds (273 and 591 kg). The Leatherback Contingency Plan established procedures to identify when and where TEDs with large escape openings should be used to protect leatherbacks during their annual, spring migration along the Atlantic seaboard. In 1995, NMFS established the leatherback conservation zone regulations (50 CFR 223.206) to implement the Leatherback Contingency Plan (60 FR 25260, May 12, 1995; 60 FR 25663, May 12, 1995). The waters north of Cape Canaveral, Florida to the North Carolina-Virginia border were identified as the leatherback conservation zone. Within this zone, weekly aerial surveys for leatherback sightings are conducted from January 1 through June 30 of each year. If sightings, in replicate surveys, exceed 10 leatherback turtles per 50 nautical miles (nm)(92.6 km) of trackline, NMFS will close, for a 2-week period, waters within 1°lat. of the trackline to shrimp trawlers unless they use a TED modified with the leatherback exit opening.

In 1999, NMFS became concerned that the leatherback conservation zone regulation was not adequate to protect leatherbacks. In the spring of 1999, NMFS implemented the 2-week closures in areas of South Carolina and North Carolina (64 FR 25460, May 12, 1999; 64 FR 27206, May 19, 1999; 64 FR 28761, May 27, 1999; 64 FR 29805, June 3, 1999). In implementing the regulation, it was determined that replicate surveys were not always feasible due to weather, staff, or equipment constraints and that a sighting of less than 10 leatherbacks per 50 nm (92.6 km) in the replicate survey was not necessarily an indication that the turtles had moved away from the closed area, and that the 2-week closure duration was insufficient to ensure protection while leatherbacks were present in the area.

From October 1 through to December 15, 1999, 15 leatherbacks stranded in Nassau through Brevard counties on the east coast of Florida. Since these strandings occurred outside of the seasonal provisions specified in the leatherback conservation zone regulation, NMFS issued an emergency 30-day rule requiring shrimp trawlers to use the leatherback TED modification (64 FR 69416, December 13, 1999). The 30-day restriction was necessary because leatherbacks were expected to be present in the area through that period. The leatherback conservation zone regulation is also limited to only a portion of the Atlantic coast. From 1986 through 1999 an average of 9 leatherbacks per year have been found stranded in the western Gulf with a high of 21 leatherbacks in 1999. Leatherbacks are also documented to strand in the eastern Gulf with an average of 5 per year from 1986 through 1999, with a high of 19 in 1989.

In summary, the leatherback conservation zone regulation may not adequately address leatherback mortality in shrimp trawls for the following reasons: The aerial surveys are limited to the Spring and do not cover the Fall when leatherbacks are known to strand, the leatherback conservation zone does not encompass all areas where leatherbacks may be present, the ability to conduct the replicate surveys required in the regulation is constrained by weather, staff and equipment and may not adequately determine whether leatherbacks have moved from the survey area, and the 2-week closures may not encompass the time that leatherbacks are present in high numbers in certain areas. Therefore, NMFS would like comments on whether the leatherback conservation zone regulation should be modified based on the problems identified previously or eliminated by requiring the use of leatherback TED modifications with long flaps year-round or, at a minimum, along the Atlantic Area in the Spring and Fall, or in other specified areas or during other specified times of the year.

TED Opening Size Options

NMFS is considering two options to modify TED openings. The first option would require the leatherback modification (the opening must have a 142-inch (361-cm) circumference with a corresponding 71-inch (180-cm) straight line stretched measurement) with a minimum 32-inch (81-cm) grid for all TEDs in all areas at all times. The advantages of this option are (1) decreased escape times for all turtles (this size opening will release leatherbacks and all large loggerhead and green turtles); (2) elimination of the leatherback conservation zone regulation which may not adequately protect leatherbacks; and (3) the leatherback TED modification would allow long flaps on bottom opening TEDs which may reduce shrimp loss and eliminate debris in the trawl. The disadvantages of this option are the 32-inch (81-cm) grid TED may not fit into small nets and small vessels may not be able to handle this size TED. Also, data on shrimp retention with the leatherback TED modification are lacking. NMFS intends to conduct tests on shrimp loss in the leatherback TED modification by early 2000.

The second option would require the use of an opening that is 35-inch (89-cm) wide by 16-inch (41-cm) high with a minimum 30-inch (76-cm) grid in all areas at all times. The advantages of this option are (1) increased release of larger loggerhead turtles and small leatherbacks; and (2) based on reports from NMFS enforcement agents and gear specialists, many fisherman already use this size opening or larger. The disadvantages are (1) this size opening will not release most leatherback turtles; and (2) use of this opening will require the continued use and modification of

the leatherback conservation zone regulation.

Other TED Modifications (Hooped Hard TED, Weedless TED, Flotation Devices)

Information from enforcement personnel and recent net shop surveys conducted by NMFS gear specialists have shown little or no use of the hooped hard TED. Enforcement personnel also report confusion with the differing regulatory requirements for escape openings for single grid and hooped hard TEDs. The weedless TED (a TED with the deflector bars not attached to the bottom to the grid frame) has been documented by NMFS enforcement with bent bars and spacing more than 4 inches (10-cm) apart. The bars of the weedless TED may bend during commercial use due to poor construction or inherent weakness in the design. NMFS TED testing in 1996 showed that weedless TEDs with the bars bent inward (toward the codend of the trawl) caught 100 percent of the turtles introduced into the trawl net. NMFS is considering either eliminating the weedless TED or requiring reinforcement of the bars. NMFS is soliciting public comment on these options.

NMFS enforcement has documented improper or inoperable flotation which will cause the TED to drag on the bottom resulting in damage and improper function. Flotation devices such as spongex do not perform well on deep-water offshore trawls because they collapse and lose buoyancy. NMFS is seeking public comment on whether different flotation, such as aluminum or hard plastic should be required in deep water areas where traditional spongex floats are ineffective.

Conclusion

NMFS is seeking advanced public input on potential changes to the TED regulations. NMFS wants to improve the performance of TEDs to protect large turtles, streamline and simplify the regulations, and improve the ability to enforce such regulations. The options NMFS is currently considering are:

Requiring the leatherback opening and long flap with a minimum 32-inch (81-cm) grid in all areas; or

Requiring a 35-inch (89-cm) by 16-inch (41-cm) opening with a minimum 30-inch (76-cm) grid in all areas;

Modifying or decertifying hooped hard TEDs and weedless TEDs;

Changing the requirements for the types of flotation devices allowed;

Modifying or eliminating the leatherback conservation zone regulation to provide better protection to leatherback turtles.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

Dated: March 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8388 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 4 p.m. on April 20, 2000, The Sweetbrier Inn, Board Room, 7125 SW Nyberg Road, Tualatin, Oregon 97062. The purpose of the meeting is to discuss the background and methods for conducting the Committee's planned law enforcement project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–8330 Filed 4–4–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 1 p.m. on Thursday, April 27, 2000, at the State Capital Building, Senate Room 4, First Floor, 9th and Grace Streets, Richmond, Virginia 23219. The Committee will hold a press conference and panel briefing to mark the public release of its report, ''Unequal Justice: African Americans in the Virginia Criminal Justice System.'' Following questions by the news media, African American community leaders, commonwealth's attorneys and defense counselors, State legislators, the State attorney general and the governor will be invited to participate in a panel discussion on the report and related matters.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–8331 Filed 4–4–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration Information Systems

Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on April 26 & 27, 2000, 9: a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

April 26

Open Session

1. Comments or presentations by the public.
2. Prototype demonstration of internet submission of license application support documents.
3. Inter-processors communications: the Infiniband and the Intel 870 chipset.
4. The future of Complementary Metal-Oxide Semiconductors and the Semiconductor Industry Association roadmap.
5. A detailed look at Infiniband technology.
6. Advances in digital signal processors.

April 26 & 27

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the ISTAC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the ISTAC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce 14th St. & Constitution Ave., N.W. Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 10, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of

meetings of this Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: March 30, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–8361 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of changed circumstance antidumping duty review, and determination to revoke order in part.

EFFECTIVE DATE: April 5, 2000.

SUMMARY: On February 8, 2000, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances antidumping duty review and preliminary results of review with intent to revoke, in part, the antidumping duty order on stainless steel sheet and strip in coils from Japan. We are now revoking this order in part, with regard to the following product: Stainless steel welding electrode strips, as described in the ''Scope'' section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the importation or sale of this steel coil, as so described.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

Background

On August 13, 1999, the Department of Commerce (the Department) received a request on behalf of Watanabe Trading Co., Ltd. (Watanabe) and Byram Steel Trading Co. (Byram) for a changed circumstance review and an intent to revoke in part the antidumping duty (AD) order with respect to specific stainless steel sheet and strip from Japan. The Department received a letter on August 30, 1999, from petitioners (Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. of CA) expressing no opposition to the request of Watanabe and Byram for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

We preliminarily determined that petitioners' affirmative statement of no interest constituted changed circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on February 8, 2000, the Department published an initiation of a changed circumstances review and preliminary results of review with an intent to revoke the order in part (65 FR 6155).

The merchandise under review is currently classifiable under subheading 7220.20.70 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of Changed Circumstance Review

The products covered by this exclusion request and changed circumstances review are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (AWS) specification ANSI/AWS A5.9–93. The products are 0.5 mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER 308L, ER 309L, ER 316L and ER 347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon—0.03% maximum
Chromium—20.0–22.0%
Nickel—10.0–12.0%
Molybdenum—0.75% maximum
Manganese—1.0–2.5%
Silicon—0.65% maximum
Phosphorus—0.03% maximum
Sulphur—0.03% maximum
Copper—0.75% maximum
Columbium—8 times the carbon level minimum—1.0% maximum

Comments

In the preliminary results, we provided parties the opportunity to comment. We did not receive any comments from the interested parties.

Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning the steel coil (*i.e.,* stainless steel welding electrode strips) and the fact that no interested parties objected to or otherwise commented on our preliminary results of review, constitute changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on stainless steel sheet and strip in coils with respect to the product described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(i). This partial revocation applies to all unliquidated entries of the above-described merchandise not subject to final results of administrative review as of the date of publication in the **Federal Register** of these final results of changed circumstances review.

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of any unliquidated entries of steel coil (*i.e.,* stainless steel welding electrode strips), as specifically described in the ''Scope of Changed Circumstance Review'' section above, and entered, or withdrawn from the warehouse, for consumption on or after March 24, 2000. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of steel coils (*i.e.,* stainless steel welding electrode strips) entered or withdrawn from warehouse for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(f)(4).

This notice also serves as a final reminder to parties subject to

administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.34(d)(1997). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.2221(c)(3), and 351.222(g) of the Department's regulations.

Dated: March 23, 2000.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8287 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of the panel review of the final injury determination made by the International Trade Commission, respecting Live Cattle from Canada (Secretariat File No. USA/CDA–99–1904–07).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the Complainant, the panel review is terminated as of March 15, 2000. Complaints were filed pursuant to Rule 39, Notices of Appearance were filed pursuant to Rule 40, however, no panel has been appointed. All ''participants'' in this review as defined in Rule 3 of the *Rules of Procedure for Article 1904 Binational Panel Review* have consented to the motion for termination. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: March 15, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–8288 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033100B]

Raised Footrope Whiting Trawl Exemption Requests and Notifications; Proposed Information Collection; Request for Comments

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

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 5, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Peter Christopher, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, 978–281–9288.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Massachusetts Division of Marine Fisheries has been conducting an experimental fishery, referred to as the Raised Footrope Whiting Trawl Experimental Fishery (Raised Footrope Experiment), to allow trawlers to target whiting, red hake, dogfish and other small mesh species using a raised footrope trawl. The experiment was designed to assess the effectiveness of a raised footrope small mesh otter trawl in reducing bycatch of regulated multispecies. The proposed Framework Adjustment 35 to the Multispecies Fishery Management Plan will recommend that the Raised Footrope Experiment become a multispecies exempted fishery. The collection-of-information requirements are: (1) A request for a certificate to fish in the Raised Footrope Whiting Trawl Exemption; and (2) a notification of intention to withdraw from the Raised Footrope Whiting Trawl Exemption. Requests for a certificate identify the person, the vessel name, the permit number, and how long he/she intends to fish in the exemption area (no less than seven days but not more than four months).

II. Method of Collection

Requests and notifications are made by telephone.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit (commercial fishermen).

Estimated Number of Respondents: 288.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 231 hours.

Estimated Total Annual Cost to Public: $81.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–8396 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 000328087–0087–01]

RIN 0651–XX23

Reestablishment of the Patent and Trademark Office as the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of reestablishment and adoption of seal.

SUMMARY: The Patent and Trademark Office Efficiency Act reestablishes the Patent and Trademark Office as the United States Patent and Trademark Office (USPTO), an agency of the United States, within the Department of Commerce. USPTO will continue to issue patents, register trademarks, and disseminate information about patents and trademarks under the policy direction of the Secretary of Commerce, but will otherwise exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. This notice will explain some key aspects of USPTO's new functions and authorities.

EFFECTIVE DATE: March 29, 2000.

ADDRESSES: Director of the United States Patent and Trademark Office, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Richard Torczon, 703–305–9035.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office Efficiency Act (PTOEA) (Pub. L. 106–113, 113 Stat. 1501A–572) becomes effective March 29, 2000, and reestablishes the Patent and Trademark Office as an agency of the United States, within the Department of Commerce. The PTOEA transforms USPTO into a performance-based organization that uses quantitative and qualitative measures and standards for evaluating cost-effectiveness that are consistent with the principles of impartiality and competitiveness. Under the PTOEA, USPTO will continue to issue patents, register trademarks, and disseminate information about patents and trademarks under the policy direction of the Secretary of Commerce, but USPTO will exercise independent control over its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. Some key aspects of the reestablishment of USPTO include:

1. New Titles

The head of USPTO is the ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office''. The Director is assisted by the ''Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office''.

The patent operations of USPTO are now headed by the ''Commissioner for Patents''.

The trademark operations of USPTO are now headed by the ''Commissioner for Trademarks''.

Under section 4741(b) of the PTOEA, any reference to the Commissioner of Patents and Trademarks, the Assistant Commissioner for Patents, or the Assistant Commissioner for Trademarks is deemed to refer to the Director, the Commissioner for Patents, or the Commissioner for Trademarks, respectively. Hence, until further notice, no change is necessary to any mailing procedure, form, or other document submitted to USPTO. Appropriate use of the new titles is acceptable as well.

2. Mailing Address

The mailing address remains the same, as reflected in the **ADDRESSES** section above. USPTO will accept mail addressed to either the Director of the United States Patent and Trademark Office or the Commissioner of Patents and Trademarks.

3. Continuity of Operations

Under subsection 4743(a) of the PTOEA, all orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges in effect on March 28, 2000, shall remain in effect with equal force. Similarly, under subsection 4743(b), all proceedings under way on March 28, 2000, shall continue. To this end, USPTO adopts all authorities, including rules, manuals, orders, and precedent, of the Patent and Trademark Office in effect on March 28, 2000. Until otherwise indicated, USPTO will continue to follow the Federal Acquisition Regulations and Department of Commerce regulations applicable to the Patent and Trademark Office on March 28, 2000.

USPTO may continue to use existing stocks of letterhead and other products.

5. Seal

USPTO adopts the following as its seal which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by USPTO shall be authenticated:

(Authority: Sec. 4712, Pub. L. 106–113, 113 Stat. 1501A–572 (35 U.S.C. 2(b)).)

Dated: March 30, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–8285 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 5, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Comment, Room 5027, 1401 Constitution Avenue, NW, Washington, DC 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of S.J. Dapkunas, Acting Director, National Medal of Technology Program, Technology Administration, 1401 Constitution Avenue, NW, Room 4226, Washington, DC 20230. In addition, written comments may be sent via fax, 202/501–8153, and e-mail to stanley__dapkunas@ta.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Medal of Technology is the highest honor bestowed by the President to America's leading innovators. The Medal is given to individuals, teams, or companies for accomplishments in the innovation, development, commercialization, and management of technology, as evidenced by the establishment of new or significantly improved products, processes, or services. The information provided is used by the Nomination Evaluation Committee in determining the merit and eligibility of nominees.

II. Method of Collection

By mail, but the nomination forms and instructions are electronically posted on the National Medal of Technology web site so interested parties can review criteria and informational requirements at their convenience.

III. Data

OMB Number: 0692–0001.
Form Number: None.
Type of Review: Reinstatement of a previously approved collection.
Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and, Federal Government.
Estimated Number of Respondents: 102.
Estimated Time Per Response: 25 hours.
Estimated Total Annual Respondent Burden Hours: 2,550.
Estimated Total Annual Respondent Cost Burden: None (no capital expenditures).

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarize or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 29, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8286 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–18–P

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange: Proposed Amendment to the Cotton No. 2 Futures Contract Prohibiting Cotton Stocks Under Commodity Credit Corporation Loan From Simultaneously Being Exchange-Certified for Delivery on the Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendment to contract terms and condition.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has proposed an amendment to the Exchange's cotton No. 2 futures contract. The proposed amendment would prohibit cotton stocks from simultaneously being included in both Exchange-certified stocks and under Commodity Credit Corporation (CCC) loan. The Acting Director of the Division, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that the proposed amendment is of major economic significance, within the meaning of section 5a(a)(12) of the Commodity Exchange Act (Act), and that its publication is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Interested person should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendment to the New York Cotton Exchange cotton No. 2 futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic Mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The cotton No. 2 futures contract requires that cotton intended for delivery be inspected for conformity with the contract's quality specifications. Cotton that is found to meet the contract's quality specifications is certified by the Exchange as deliverable on the futures contract.

The proposal will specify that no bale of cotton may simultaneously be included in both certified stocks and Commodity Credit Corporation (CCC) loan stocks. The Exchange intends to make the proposed amendment effective within 30 days following Commission approval, if granted, with respect to the first contract month with no open interest on such effective date and for all contract months listed thereafter.

In support of the proposal, the Exchange stated that:

> From the perspective of the cotton futures market, the significant change to the cotton loan program which took effect in 1986 was the provision that the CCC would waive interest charges and pay some or all of the storage charges that accrued during the loan period as necessary to make the loan repayable at the lower of the loan rate plus storage and interest, or the AWP [Adjusted World Price for cotton]. In the event of forfeiture to the CCC, no interest is charged, and the CCC assumes responsibility for the warehouse storage charges that accrued during the period that the cotton was under loan.
>
> Therefore, it is clear that, particularly at times when the AWP is below the loan rate, cotton under loan is subject to non-commercial forces. This is in contrast to ''free'' cotton stocks, which are subject to commercial market forces, particularly to the intertemporal relationships in the cotton No. 2 futures market. For producers and cooperatives, the loan program effectively provides a free put option at an exercise (the

loan rate) which may be significantly above the prevailing market price.

While the impact of the loan program on the cash market is not within the Exchange's jurisdiction, the rules relating to certification of stocks for futures delivery are, and the Exchange is concerned that the interplay between the loan program and the stocks certification process does not adversely affect the economic performance of the futures market.

The level of certified stocks is an important influence in the day-today behavior of the futures market. It is, after all, (and is designed to be), the most relevant measure of available deliverable supply. Furthermore, * * * the level of certified stocks is the primary determinant of inter-temporal price relationships in the cotton No. 2 futures market, which in turn underpin the role of the futures market in guiding commercial inventory management activity.

Hence, the Exchange's concern that, if certified stocks include cotton which is under loan, it is not responsive to commercial market forces and is eligible to be forfeited to the CCC on non-commercial terms, the future market will not be properly informed as to commercially available deliverable supply and its role in guiding commercial inventory management will be impaired.

In support of its view that the level of certified cotton stocks is the primary determinant of inter-temporal cotton futures price relationships, the Exchange provided an econometric analysis comparing the relationship between the December/March cotton futures price spread and the level of stocks certified for futures delivery with the relationships between the same cotton futures price spread and total cotton stocks in public warehouses and total U.S. stocks. Based on this analysis, the Exchange concluded that ''[t]he results confirm the critical role of certified stocks in determining price spread behavior and demonstrate the markedly superior explanatory power of certified stocks in this regard over that of other publicly available stocks data.''

The Exchange also said that, since 1993, it has monitored and included in its weekly stocks report data on certified stocks which are under CCC loan. The Exchange indicated that, during this period, certified stocks under CCC loan have never been more than several hundred bales and that, since 1995, there have been no certified stocks under loan.

The Division is requesting comments on the proposed amendment. The Division is particularly interested in comments in regard to whether: (1) the continuation of the practice of allowing certified cotton stocks to remain under CCC loan represents a threat to orderly trading and delivery in the futures market; (2) the proposal will reduce deliverable supplies to levels that would make the futures market susceptible to price manipulation or distortion; and (3) the proposal, by precluding the use of a method of financing that is commonly used in the cash market, is consistent with the requirements of section 15 of the Commodity Exchange Act.[1]

The proposed amendment was submitted under the Commission's Fast Track procedure for the review of rule changes which provides that, absent and contrary action by the Commission, the proposed amendment may be deemed approved 45 days after the Commission received the proposal. However, in view the complex issues posed by the proposal and to provide an adequate period for interested parties to comment, the Fast Track review period has been extended by an additional 30 days to May 31, 2000, pursuant to the provisions of Commission Regulation 1.41(b).

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendment can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendment, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

[1] Section 15 stipulates that, in requiring or approving any bylaw, rule, or regulation of a contract market, the Commission must take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the Act, as well as the policies and purposes of the Act.

Issued in Washington, DC, on March 31, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–8354 Filed 4–4–00; 8:45 am]

BILLING CODE 6351–01–M

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 May 5, 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, NW, Room 10235, New Executive Office Building, Washington, DC 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: March 30, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants Under the Community Scholarship Mobilization Program.

Frequency: Annually.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 6,000.

Abstract: This application is essential to conducting the competition for new awards in Fiscal Year 2000 for national organizations to support the establishment or ongoing work of regional, state, local, or community program centers.

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, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments 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. 00–8302 Filed 4–4–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant)

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation of applications for grant awards for high-energy density and laser-matter interaction studies.

SUMMARY: Pursuant to 10 CFR 600.8, the DOE announces that it plans to conduct a technically competitive solicitation for basic research experiments in high energy density and laser matter interaction studies at the National Laser Users' Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE). Grant Solicitation No. DE–PS03–00SF22056. Universities or other higher education institutions, private sector not-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding (project cost) expected to be available for Fiscal Years 2001 and 2002 program cycle is $1,400,000. Multiple awards are anticipated under the total budget of $700,000 per year.

FOR FURTHER INFORMATION CONTACT: Janice Williams, Contract Specialist, DOE Oakland Operations Office, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208, Telephone No.: (510) 637–1914, Facsimile No.: (510) 637–2074, E-mail janice.williams@oak.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation document contains all the information relative to this action for prospective applicants. The solicitation is targeted for release on or about March 31, 2000. The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE. It is anticipated that multiple grants will be awarded within the a available funding. The unique resources of the NLUF are available to scientists for state-of-the art experiments primarily in the area of inertial confinement fusion (ICF) and related plasma physics. Other areas such as spectroscopy of highly ionized atoms, laboratory astrophysics, fundamental physics, material science, and biology and chemistry will be considered on a secondary basis. The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Available at the LLE for NLUF researchers is the OMEGA LASER, a 30 kJ UV 60 beam laser system (at 0.35 um) suitable for direct-drive ICF implosions. This system is suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy. The NLUF program for FY 2001 & FY 2002 is to concentrate on experiments that can be done with the OMEGA laser at the University of Rochester and development of diagnostic techniques suitable for the OMEGA system. Measurements of the laser coupling, laser-plasma interactions, core temperature, and core density are needed to determine the characteristics of the target implosions. Diagnostic techniques could include either new instrumentation, development of analysis tools, or development of targets that are applicable for 30 kJ implosions. Additional information about the facilities and potential collaboration at the NLUF can be obtained from: Dr. John Soures, Manager, National Laser Users' Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623.

Issued in Oakland, CA on March 28, 2000.

Joan Macrusky,

Director, Financial Assistance Center, Department of Energy, Oakland Operations Office.

[FR Doc. 00–8328 Filed 4–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of International Affairs; Asia-Pacific Economic Cooperation Energy Ministers Conference

AGENCY: Department of Energy.

ACTION: Notice of upcoming conference.

SUMMARY: The U.S. Department of Energy and the City of San Diego, California, will co-sponsor the Asia-Pacific Economic Cooperation (APEC) Energy Ministers Conference: ''Turning Vision Into Reality,'' in San Diego, California. The Conference will focus on strategies to implement existing policy commitments and to enhance investment in clean and sustainable energy development, on opportunities for regional energy market integration, and on continued transition to a market-oriented business climate. The region's energy ministers, and representatives of the private sector, multilateral institutions and nongovernment organizations will work together to create a vision for the 21st Century that will support clean and sustainable energy and economic development.

DATES: The three-day conference will be held from May 10–12, 2000.

FOR FURTHER INFORMATION CONTACT: For further information and to register on line, please visit our website on *www.apecenergy.org.* You may also contact APEC Conference Headquarters on 703–352–7633, or via fax on 703–352–9513 for further information regarding the conference. For inquires regarding exhibits for industry displays, please contact John Reyes in San Diego,

California by telephone on 619–557–2803.

SUPPLEMENTARY INFORMATION: This is the first time the Department of Energy has hosted an APEC Energy Ministers Conference. Initial plans for the Conference were announced in February.

Attendees: Approximately 600 participants are expected to attend the event, including representation by international and regional organizations such as the World Bank, International Finance Corporation, and the Asian Development Bank; Energy Ministers and representatives of APEC member economies; and private sector representatives from the region's major electricity, oil, gas, renewable and energy efficiency, energy service and coal companies.

Issued in Washington, DC on March 24, 2000.

David L. Goldwyn,

Assistant Secretary for International Affairs.

[FR Doc. 00–8327 Filed 4–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–21–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2000.

Take notice that on March 28, 2000, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 2000.

Canyon states that the purpose of this filing is to make several minor ''clean-up'' type changes to its Tariff. None of these changes are substantive in nature, but rather are administrative changes to correct references in Canyon's Tariff which have become inaccurate due to changed circumstances. Specifically, the changes are to: (1) revise the Preliminary Statement to reflect a change in address and status of Canyon's Rate Schedules FCS and ICS to reflect a change in address and telecopy number for Canyon's Houston, Texas office; (3) revise Section 15.4 of the General Terms and Conditions (GT&C) of Canyon's Tariff regarding the installation of Internet software related to users of Canyon's DART software; (4) revise Section 31.2(a) of the GT&C of Canyon's Tariff to reflect a title and general office location reference change regarding the addressing of formal complaints; and (5) revise Section 34.3 of the GT&C of Canyon's Tariff to reflect a change in Canyon's Internet website address.

Canyon requests any waivers of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective May 1, 2000.

Canyon states that copies of the filing have been mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 285.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8290 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meetings

March 30, 2000.

Take notice the Ecological Resources subgroup of the Mokelumne Relicensing Collaborative will meet on April 12 and 13, 2000, from 9 a.m. to 5 p.m. The Recreation subgroup will meet on April 14, 2000, from 9 a.m. to 4 p.m. These meetings will be held at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774 or Tim Welch at (202) 219–2666.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8293 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2342–011]

Pacific Corp; Notice of Deadline for Answers and Reply Comments

March 30, 2000.

The Commission's February 2, 2000, Notice of Offer of Settlement and Application for Amendment of License, as clarified by a notice issued on March 9, 2000, set a deadline for filing comments and or motions in Project No. P–2342–011 of March 27, 2000. The deadline for filing answers and reply comments to filings submitted in response to the February 2 notice is April 11, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8294 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–22–0000]

Trailblazer Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

March 30, 2000.

Take notice that on March 28, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 2000.

Trailblazer states that the purpose of this filing is to make several minor ''clean-up'' type changes to its Tariff. None of these changes are substantive in nature, but rather are administrative changes to correct references in Trailblazer's Tariff which have become inaccurate due to changed circumstances. Specifically, the changes are to: (1) Revise the Preliminary Statement to reflect the names of Trailblazer's current partners; (2) revise Section 3.2 of Trailblazer's Rate Schedules FTS and ITS to reflect a change in address and telecopy number

for Trailblazer's Houston, Texas office; (3) revise Section 18.4 of the General Terms and Conditions (GT&C) of Trailblazer's Tariff regarding the installation of Internet software related to users of Trailblazer's DART software; (4) revise Section 34.3(a) of the GT&C of Trailblazer's Tariff to reflect a title and general office location reference change regarding the addressing of formal complaints; and (5) revise Section 37.3 of the GT&C of Trailblazer's Tariff to reflect a change in Trailblazer's Internet website address.

Trailblazer requests any waivers of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective May 1, 2000.

Trailblazer states that a copies of the filing have been mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http: //www. ferc. fed. us/ online/rims. htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8291 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

March 30, 2000.

a. *Application Type:* Request for Approval to Convey Project Property.

b. *Project No.:* 2169–015.

c. *Date Filed:* February 24, 2000.

d. *Applicant:* Alcoa Power Generating Inc. (APGI), Tapoco Division.

e. *Name of Project:* Little Tallassee.

f. *Location:* The Project is located on the Little Tennessee River in Monroe and Blount Counties, Tennessee, and Cheoah River in River in Graham and Swain Counties, North Carolina. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* J.E. Adams, Alcoa Power Generating Inc., 300 N. Hall Road, Alcoa, TN 37701; Tel: (423) 977–3333.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for Filing Comments and/or Motions:* May 10, 2000. Please include the project number (2169–015) on any comments or motions filed.

k. *Description of Filing:* APGI is proposing to revise the project boundary of the Santeetlah development of the Little Tallassee Project, FERC No. 2169, at the property of Robert H. and Joan K. Mosley (Mosleys). The purpose is to resolve a discrepancy of the project boundary line at the Mosleys' property and set it along the edge of the retaining wall that runs along the reservoir edge. The area represents a de minimis portion of the project boundary.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www. ferc. fed.us/ online/rims. htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8292 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM99–2–000; EL00–39–000; EC00–50–000; ER00–1520–000; EC00–67–000; EL00–46–000; EL00–13–000; ER98–4410–000; ER98–2910–000; EL98–74–000; ER95–112–000; ER96–586–000; ER95–1001–000; EL95–17–000; ER95–1615–000; EL00–12–000; ER96–2709–000; ER00–1743–000; EL99–87–000; ER95–1042–000; ER93–465–000; ER93–922–000; EL00–34–000; EL00–9–000; ER99–2770–000; EL99–69–000; ER99–4392–000; EL98–36–000; ER91–569–000; EL98–8–000; ER99–4400–000; ER00–1655–000; TX93–4–000; EL93–51–000; EF98–3011–000; ER93–465–000; ER93–922–000; ER00–1713–000; ER00–801–000; ER00–1947–000; EL95–33–000]

Regional Transmission Organizations; Southwest Power Pool, Inc.; CP&L Holdings, Inc. On Behalf of Its Public Utility Subsidiaries and Florida Progress Corporation On Behalf of Its Public Utility Subsidiaries; Louisville Gas and Electric Company; Kentucky Utilities Company; Merger Sub; Entergy Power Marketing Corporation v. Southwest Power Pool; Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency; v. Florida Power & Light Company; Entergy Services, Inc.; Entergy Services, Inc.; Entergy Services, Inc.; Entergy Services, Inc. and Entergy Power, Inc.; Entergy Power Marketing Corp. Tennessee Power Company; Entergy Services, Inc.; Entergy Services, Inc.; Clarksdale Public Utilities Commission v. Entergy Services, Inc. as agent for Entergy Arkansas, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States, Inc.; System Energy Resources, Inc.; Florida Power & Light Company; ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company v. Entergy Gulf States, Inc.; Cherokee County Cogeneration Partners, L.P. v. Duke Electric Transmission—a division of Duke Energy Corporation; Florida Power & Light Company; Southwest Power Pool, Inc.; Aquila Power Corporation v. Entergy Services, Inc. as agent for Entergy Arkansas, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States, Inc.; Entergy Services, Inc.; Florida Power & Light Company; Southern Company Services, Inc.; Southern Company Services, Inc.; Florida Municipal Power Agency v. Florida Power & Light Company; United States Department of Energy—Southeastern Power Administration; Florida Power & Light Company; Entergy Services, Inc.; Tampa Electric Company; Entergy Services, Inc.; Louisiana Public Service Commission v. Entergy Services, Inc.; Notice of Meeting

March 29, 2000.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The fifth workshop is scheduled for April 6–7, 2000 in Atlanta, Georgia. During the course of the Atlanta workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Atlanta workshop. there will be no Commission transcript of any of the workshops, and information discussed or disseminated in the workshop will not constitute part of the decisional record in the above-listed cases, unless formally filed in accordance with Commission regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8373 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,369,404.60, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of remedial and consent orders with respect to Bi-Petro Refining Company, Inc., *et al.* (Bi-Petro), Case Nos. VEF–0035, *et al.* The OHA has determined that the funds will be distributed in accordance with the provisions of 10 C.F.R. Part 205, Subpart V and 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to Bi-Petro Refining Co., Inc., *et al.* Special Refund Proceeding and sent to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC, 20585–0107. All applications should display a reference to Case Nos. VEF–0035, *et al.* and be postmarked on or before September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director Office of Hearings and Appeals, 1000 Independence Ave., S.W., Washington, DC 20585–0107, (202) 426–1527.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,369,404.60, plus accrued interest, obtained by the DOE under the terms of Remedial Orders and Consent Orders regarding Bi-Petro Refining Company, Inc., *et al.* Under the Remedial Orders, companies were found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products during the relevant audit periods. The Consent Orders resolved alleged violations of these regulations.

The OHA will distribute the funds in a two-stage refund proceeding. Purchasers of certain covered petroleum products from any one of the firms considered in the proceeding have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the firms during the relevant audit periods. In the event that money remains after all first-stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before September 30, 2000. Instructions for the completion of refund applications have been set forth in Section III of the Decision immediately following this notice. Refund applications should be mailed to the address listed at the beginning of this notice.

Unless labeled as ''confidential'', all submissions must be made available for public inspection between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays, in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, Washington, D.C.

Dated: March 28, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 28, 2000.

Decision and Order

DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

Names of Firms: Bi-Petro Refining Co., Inc., *et al.*

Dates of Filing: October 19, 1999, *et al.*

Case Numbers: VEF–0035, *et al.*

On October 19, 1999, the Office of General Counsel (OGC) of the

Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 C.F.R. § 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Bi-Petro Refining Co., Inc. and eight other firms pursuant to Remedial Orders and Consent Orders (Remedial Order and Consent Order funds), and have determined that such procedures are appropriate. Each firm's name, case number and amount of money remitted to remedy its pricing violations has been set out in the Appendix immediately following this Decision.

Under the terms of the Remedial Orders and Consent Orders, a total of $1,369,404.60 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 C.F.R. Part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

On January 21, 2000, we issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the funds that each firm remitted to DOE. We proposed implementing a two-stage refund proceeding and we stated that applicants who purchased certain covered petroleum products from any one of the retailers identified in the Appendix to the PDO would be provided an opportunity to submit refund applications in the first stage. In the event funds remained after all first stage claims had been considered, we stated that the remaining funds would be disbursed in the second stage in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. § 4501) (PODRA).

We provided a 30-day period for the submission of comments concerning the proposed procedures. However, we have received no comments since the PDO was published in the **Federal Register** more than 30 days ago. The proposed procedures will therefore be adopted in the same form in which they were originally outlined. Immediately set forth below are the specific considerations that will guide our evaluation of refund applications during the first stage.

III. The First-Stage Refund Procedures

Refund applications submitted in these special refund proceedings will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. In those proceedings, we have frequently chosen to adopt a number of rebuttable presumptions relating to pricing violations and injury. Such a policy reflects our belief that adoption of certain presumptions (1) permits applicants to participate in refund proceedings in larger numbers by avoiding the need to incur inordinate expense; and (2) facilitates our consideration of first stage refund applications. 10 C.F.R. § 205.282(e). For those reasons, we have adopted similar presumptions in the present proceeding.

A. Calculating the Refund

We have presumed that the pricing violations were dispersed equally throughout each firm's refined petroleum product sales during the relevant audit period. We therefore proposed that each applicant's potential refund should be calculated on a volumetric basis. Under the volumetric approach, refunds are calculated by multiplying the gallons of refined product each applicant purchased by the per gallon refund amount, multiplied by the percentage of funds DOE succeeded in collecting (volumetric). Applicants believing they were disproportionately overcharged by the pricing violations may present documentation which supports that claim. Those who succeed in showing they were disproportionately overcharged will be eligible to receive refunds calculated at a higher volumetric.

We have established a volumetric for each of the firms whose name appears in the Appendix accompanying this Decision. The precise volumetric for each firm can be found in the Appendix.

Each volumetric was obtained by multiplying $.0004 by the collection percentage.[1] This percentage was calculated by dividing the amount collected (with interest accrued by the DOE as of the date of issuance of this final implementation order) by the amount the firm was either ordered to pay in a Remedial Order or agreed to pay in a Consent Order.[2]

B. Eligibility for a Refund

In order to be eligible to receive a refund in this proceeding, each applicant must (1) document the volume of certain petroleum products listed in the Appendix that it purchased during the relevant period; and (2) demonstrate that it was injured by the overcharges. The threshold requirement for any applicant is documenting the volume of product it purchased. This requirement is typically satisfied when the applicant successfully demonstrates ownership of the business for which the refund is sought and submits documentation which supports the volume claimed in its refund application.

The injury showing, however, is a potentially more difficult requirement for applicants to satisfy, especially those seeking smaller refund amounts. This is true because an applicant must demonstrate that it was forced to absorb the overcharges. Our cases have often stated that an applicant accomplishes this by demonstrating that it maintained a ''bank'' of unrecovered product costs and showing that market conditions would not permit them to pass through those increased costs. *See, Quintana Energy Corp.*, 21 DOE ¶85,032 at 88,117 (1991).

We recognized that the cost to the applicant of gathering evidence of injury

[1] However, if the collection percentage is 100 percent or greater, the volumetric was not reduced.

[2] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶85,015 (1984). In addition, we note that we may need to lower the volumetric for a particular proceeding, if the volume claimed by applicants multiplied by the volumetric indicates that if all volume were claimed, the fund would be exhausted or insufficient to satisfy all claims. We may also need to lower a particular volumetric if it appears inappropriate, based on our experience in these cases.

to support a relatively small refund claim could exceed the expected refund and thereby cause some injured parties to forego an opportunity to obtain a refund. In view of these difficulties, we proposed adopting a number of injury presumptions which simplify and streamline the refund process. The simplified procedures reduce the burden that would have been placed on this Office had we required detailed injury showings for relatively small refund applications.

C. Presumptions of Injury

Set forth below are the presumptions of injury that have been adopted for each class of applicant likely to submit refund applications in this proceeding. These presumptions are not unlike injury presumptions adopted by OHA in many other refined product proceedings. Each presumption turns on the category of applicant.

Small-claim Presumption

We have adopted a small claim presumption of injury for resellers, retailers and refiners whose claim is $10,000 or less. Such an applicant need only document the volume of certain covered petroleum products listed in the Appendix he or she purchased during the audit period from one or more of the firms named in the Appendix to be eligible to receive a full refund. *See Enron Corporation*, 21 DOE ¶ 85,323 at 88,957 (1991).

Medium Range Presumption

Medium range applicants; that is, applicants seeking refunds in excess of $10,000 but less than $50,000, are eligible to receive 40 percent of their allocable share without proving injury. Like small-claim applicants, these applicants will only be required to document the volume of certain covered petroleum products listed in the Appendix they purchased during the audit period from any one of the firms named in the Appendix to be eligible to receive a refund. *See Shell*, 17 DOE at 88,406.

End-user Presumption

We have presumed that end-users of petroleum products whose businesses were unrelated to the petroleum industry and were not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h, were injured by each of the firm's pricing violations. Unlike regulated firms, end-users were not subject to price controls during the audit period. Moreover, these firms were not required to keep records that justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services is beyond the scope of a special refund proceeding. *See American Pacific International, Inc.*, 14 DOE ¶85,158 at 88,294 (1986). End-users seeking refunds in this proceeding will therefore be presumed to have been injured. In order to receive a refund, end-user applicants need only document the volume of certain refined petroleum products they purchased during the relevant audit period from any of the nine firms whose name appears in the Appendix following this Decision. Meritorious applicants are eligible to receive their full allocable share. *See Shell*, 17 DOE at 88,406.

Refunds in Excess of $50,000 and Other Applicants

Applicants seeking refunds in excess of $50,000, excluding interest, will be required to submit detailed evidence of injury. These applicants must show that the overcharges were absorbed, not passed through to their customers. They will therefore be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

Regulated Firms and Cooperatives

Regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their customers the benefit of any refund received, are exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); *see also Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We require a regulated firm or cooperative to establish that it was a customer of one of the firms or a successor thereto. In addition, we require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rata share. However, any public utility claiming a refund of $10,000 or less, or accepting the medium-range presumption of injury, will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered petroleum products to non-members will be treated in the same manner as sales by other resellers or retailers.

Indirect Purchasers

Firms which made indirect purchases of covered petroleum products from one of the firms during the relevant period may also apply for refunds. If an applicant did not purchase directly from one of the firms, but believes that the covered petroleum products it purchased from another firm were originally purchased from the firms at issue, the applicant must establish the basis for its belief and identify the reseller from whom the covered petroleum products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of one of the nine firms' products passed through these firms' alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

Spot Purchasers

We adopt the rebuttable presumption that a claimant who made only spot purchases from one of the firms was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered petroleum products from one of the firms. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from one of these firms. *E.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging these firms' failure to furnish petroleum products that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR Part 211. Any such application will be evaluated with reference to the standards we set forth in Subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynold Industries, Inc.*, 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the firm at issue and the likelihood that the firm at issue failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it sought redress from the

alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the DOE's (or its predecessors') treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that the firm may have had to the alleged allocation violation. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than the firm at issue. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of the firm's allocation violations in general and regarding the specific allocation violation alleged by the claimants. We will also pro rate any allocation refunds that would otherwise be disproportionately large in relation to the funds collected. *cf. Amtel, Inc./ Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

Consignees

We adopt a rebuttable level of injury presumption of 10 percent for all consignees of the instant firms during the relevant periods. *See Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Accordingly, a consignee may elect to receive a refund based on 10 percent of its total allocable share. Any consignee applicant will be free to rebut this presumption and prove a greater injury in order to receive a larger refund.

D. How To Apply for a Refund

To apply for a refund from one or more of the firms' remitted funds, an applicant should submit an Application for Refund containing all of the following information:

(1) The applicant's name; the current name and address of the business for which the refund is sought; the name and address during the refund period of the business for which the refund is sought; the taxpayer identification number; a statement specifying whether the applicant is an individual, corporation, partnership, sole proprietorship or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[3] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names.

(2) The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the relevant period of purchase, if available. If these records are not available, the applicant may submit estimates of its relevant refined petroleum product purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement indicating whether the applicant or a related firm has filed, or has been authorized to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the firm from whom it purchased covered petroleum products and consequently is filing its present application, the applicant should explain this affiliation, including the time period in which it was affiliated. If not, a statement that the applicant was not affiliated with that firm.

(5) The statement listed below, provided it has been signed by the applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the entity from whom it bought the relevant covered petroleum products and its respective case number as listed in the Appendix. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish this information to be publicly disclosed, the applicant must submit an original application, clearly designated ''confidential'', containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than September 30, 2000, and sent to: Bi-Petro Refining Co, Inc., *et al.*, VEF–0035, *et al.*, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

E. Minimal Amount Requirement

Only claims for at least $15 will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985).

F. Additional Information

OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

G. Refund Applications filed by Representatives

OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order. Strict compliance with the filing requirement as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant, will be required.

H. Filing Deadline

The deadline for filing an Application for Refund is September 30, 2000. We are not anticipating extending this deadline for any reason.

IV. Second-Stage Refund Procedures

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA

[3] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant who does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications. It is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA, and any funds that OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

Applications for Refund from the funds remitted to the Department of Energy by any one of the firms named in the Appendix to this Decision may now be filed.

Dated: March 28, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Name of firm primary operating location or headquarters location	OHA case No.	Consent order tracking system No. (COTS)	Type of business	Covered products	Applicable Dates*	Amounts	Actual payment principal	With interest through 01/31/00	Collection percentage	Volumetric
						Agreed to or ordered				
South Central Terminal Co., Inc., f/k/a Bi-Petro Refining Co., Inc., P.O. Box 3245, Springfield, Il 62708.	VEF–0035 ..	720S00565W	refiner	gasoline ..	July 1978–Dec. 1979.	$236,242.00	$167,287.26	$217,597.33	92	0.00037
Don Rettig/Don's Shell 1097 W. Tennyson Rd., Hayward, CA 94544.	VEF–0037 ..	999K90058W	retailer	gasoline ..	Aug. 1979–April 1980.	4,208.40	1,800.00	3,944.04	94	0.00038
Gugino's Exxon, 25th and Pine St., Niagara Falls, NY 14301.	VEF–0040 ..	999K90074W	retailer	gasoline ..	Aug.–Sept. 1979.	1,772.00	530.00	1,113.02	63	0.00025
J.D. Streett & Company, Inc., 144 Weldon Parkway, M.D. Heights, MO 63043.	VEF–0042 ..	720H00555W	reseller-retailer.	all covered products.	Aug. 1973–Jan. 1981.	400,000.00	532,362.00	716,949.37	179	**** 0.00040
McWhirter Distributing Co., Inc., 6633 Valjean Ave., Van Nuys, CA 91406.	VEF–0045 ..	930H00291W	reseller-retailer.	gasoline ..	April–Sept. 1979.	128,171.06	28,101.00	30,747.05	24	0.00010
Charles B. Luna, formerly d/b/a Ozark County Gas Co., P.O. Box 1339, Branson, MO 65616.	VEF–0046 ..	720H00606W	reseller-retailer.	all covered products.	July 1977–Jan. 1981.	***154,128.74	26,397.43	43,942.80	29	0.00012
Sherer Oil Company/Ringer Tri-State Oil Co., 608 Central Ave., Johnstown, PA 15902.	VEF–0052 ..	340H00496W	reseller-retailer.	gasoline ..	April–Sept. 1979.	387,465.05	96,921.55	150,832.70	39	0.00016
Swann Oil Company** 111 Presidential Blvd., Bala-cynwyda, PA 19004.	VEF–0053 ..	320H00222W	reseller-retailer.	heating oil, residual fuel oil.	Nov.–Dec. 1973.	6,874,342.08	362,811.45	497,562.97	7	0.00003
Vantage Petroleum Co., 515 Johnson Ave., Bohemia, NY 11716.	VEF–0056 ..	200H00026W	reseller-retailer.	gasoline ..	April–Aug. 1979.	2,049,481.61	153,193.91	209,157.98	10	0.00004
Totals						10,235,810.94	1,369,404.60	1,871,847.26		

* Or until relevant decontrol date.
** Subsidiaries include: Swann Oil Co. of Allentown, Swann Oil of Georgia, L.A. Swann Oil Co., and Swann Oil Co. of Philadelphia.
*** The amount the applicant was originally ordered to pay was increased from $125,000.00 to $154,128.74.
**** As explained in the Decision, since the collection percentage in this case is greater than 100 percent, the volumetric will not be reduced.

[FR Doc. 00–8329 Filed 4–4–00; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100156; FRL–6499–8]

Systems Integration Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Systems Integration Group, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Systems Integration Group, Inc. has been awarded a contract to perform work for OPP, and access to this information will enable Systems Integration Group, Inc. to fulfill the obligations of the contract.

DATES: Systems Integration Group, Inc. will be given access to this information on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. Contractor Requirements

EPA's Office of Pesticide Programs (OPP) is responsible for regulating the supply and use of chemical and biological agents produced, marketed, or used for pest control in the United States. Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and portions of the Federal Food, Drug, and Cosmetic Act (FFDCA), OPP registers and classifies pesticide residues in food and feed commodities, and as appropriate, suspends or cancels registrations and other regulatory clearances of pesticides found likely to cause unreasonable adverse effects on man or the environment. In carrying out these responsibilities, OPP makes thousands of discrete regulatory decisions each year. Some decisions are of narrow scope and impact and relatively simple; others are of a very board scope and impact and are extremely complex. Most of these decisions are based on review of applications submitted by regulated firms, and of supporting technical data describing the properties, effects, and other characteristics of the pesticides.

Under Contract No.68–W–00–096, the contractor will provide in-processing and indexing support for studies and other technical documents of archival significance and in-processing and data capture support for regulatory applications, decisions, and incident reports. The contract also provides on site full-time operational data entry support and staffing for the OPP computer terminal room and management of the Information Services Center located in Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Systems Integrations Group, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Systems Integration Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Systems Integration Group, Inc. until the requirements in this document have been fully satisfied. Records of information provided to Systems Integration Group, Inc. will be maintained by EPA Project Officers for this contract. All information supplied to Systems Integration Group, Inc. by EPA for use in connection with this contract will be returned to EPA when Systems gration Group, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: March 21, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–8002 Filed 4–4–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–927; FRL–6498–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–927, must be received on or before May 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–927 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (703) 308–8733; e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–927. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–927 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3.*Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–927. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Kathleen D. Knox,

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

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 0F6105 from BioTEPP, Inc, 177, 71 e Street East, Charlesbourg, Qc, Canada G1L 1H4, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Mamestra configurata nucleopolyhedrosis* virus.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, BioTEPP, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by BioTEPP, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

BioTEPP, Inc. Petition Summary

0F6105

A. Product Name and Proposed Use Practices

Virosoft^{BA3} is an insect specific viral insecticide for the control of the Bertha Armyworm on canola in the ecozone 3. It is to be applied either preventively directly on the ground at seeding or curatively on canopy upon appearance of adult moths. This product can be used in an integrated pest management program because of its high specificity which leaves the rest of the ecological system unaltered (including bees, natural predators, parasitoids, soil fauna, etc.).

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient in Virosoft^{BA3} is a wildtype *baculovirus Mamestra configurata Nucleopolyhedrosis* virus that has been selected from the same ecozone in which it will be produced and distributed. This group of insect viruses is known to be highly specific and able to infect only very closely related species. Their greatest advantage is their high host specificity; and the fact that they consist of the same molecular structures as all other living beings: nucleic acids and amino acids. Both facts account for the complete environmental safety of *baculoviruses*. There has been no literature which reports any adverse effects to humans or to any member of the ecosystem as these *baculoviruses* do no leave behind any threatening residues. Their ability to efficiently kill insect larvae and to increase in number in the environment, their long shelf life, ability to adapt to changes in their host species, and their complete environmental safety characterize *baculoviruses* as one of the most promising means in insect pest control for the future.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residues if any, are not expected to pose any threat to human health or to any member of the ecosystem due to the lack of toxicity associated with insect *baculoviruses*.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Because of their complete environmental safety for the environment, non-target species like bees or ants and for humans, it is considered that no analytical tests for detecting and measuring levels of *baculovirus* residue are necessary.

C. Mammalian Toxicological Profile

Both *baculovirus* types or genera (GVs and NPVs) have seen widespread development, testing, and use in biological pest control. During the past 40 years, extensive testing of the safety of *baculoviruses* for vertebrate species has been carried out. To date, at least 26 different *baculoviruses* have been tested in detail for pathogenicity. The data obtained from these studies proved *baculoviruses* to be harmless to and unable to replicate in microorganisms, non-invertebrate cell lines, vertebrates and plants. In 1973 a FAO document covered the use of viruses in pest management. Their view was that the use of *baculoviruses* had been sufficiently studied to allow its recommendation for insect pest control.

The long history of safe use as indigenous microbial pest control agent is an important element of its safety. Moreover, *baculoviruses* occur naturally in the environment for hundreds of thousands of years. They have been used extensively in many countries without any adverse effects on the existing fauna beside the target insect pest. Because the MCNPV/BIOTEPP in Virosoft^{BA3} is an indigenous insect virus it constitutes an extension of the natural system that does not carry the risk associated with the introduction of foreign elements in the ecosystem.

In addition to the safe history of insect *baculoviruses*, invertebrate pathology disciplines as well as medical, veterinary and phytopathology sciences have failed to find incidences of NPVs and GVs infecting hosts outside of the arthropods. This gives rise to increasing confidence that new *baculoviruses* need to be subjected to only a reduced range of standardized tests required for registration.

The degree of exposure of vertebrates to naturally occurring *baculoviruses* is vast in scope and time and no adverse effects were ever observed on non-target animals or plants. Feces of birds, for example, contained 18% by weight of inclusion bodies when they fed on infected caterpillars with naturally occurring viruses. NPVs have undergone the most extensive safety test of all entomopathogenic viruses and no adverse effects were observed in many years of artificial applications and for many different *baculoviruses* on birds, wild mammals, fish, microorganisms and plants.

Virosoft ^{BA3} has been tested for its innocuity against mammalians and non-target arthropods and proven the lack of toxicological effects on non-target beneficial organisms or mammalians.

D. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Since Virosoft^{BA3} is a naturally occurring *baculovirus* and that naturally occurring insect virus are present in the environment and consequently on our food, and because the amount of virus applied to one hectare (ha) of crop is equivalent to 100 insect larvae, the amount of virus expected to be present on food is not expected to be higher than in a natural system when insect control is maintained by a naturally occurring virus. As the lack of mammalian toxicity and of allergenic effects has been demonstrated over

many years for *baculoviruses* and that the safety of Virosoft^{BA3} has been demonstrated both in the field and in the laboratory (mammalians and non-target arthropods), aggregate exposure is considered to be insignificant as well as completely safe for human consumption.

ii. *Drinking water*. Because the amount of virus applied to one ha of crop is equivalent to 100 insect larvae, the amount of virus expected to be present in drinking water is not expected to be higher than in a natural system when insect control is maintained by a naturally occurring virus. As the lack of mammalian toxicity and of allergenic effects has been demonstrated over many years for *baculoviruses* and that the safety of Virosoft^{BA3} has been demonstrated both in the field and in the laboratory (mammalians and non-target arthropods), aggregate exposure is considered to be insignificant as well as completely safe for human consumption.

2. *Non-dietary exposure*. Because the amount of virus applied to one ha of crop is equivalent to 100 insect larvae, the amount of virus expected to be present on food, water and non-dietary exposure is not expected to be higher than in a natural system when insect control is maintained by a naturally occurring virus. As the lack of mammalian toxicity and of allergenic effects has been demonstrated over many years for baculoviruses and that the safety of Virosoft^{BA3} has been demonstrated both in the field and in the laboratory (mammalians and non-target arthropods), aggregate exposure is considered to be insignificant as well as completely safe for human consumption.

E. Cumulative Exposure

The unique high specificity of insect *baculovirus* coupled with the demonstrated absence of mammalian toxicity of Virosoft^{BA3} excludes the expectation of cumulative exposure with other compounds.

F. Safety Determination

1. *U.S. population*. Both *baculovirus* types or genera (GVs and NPVs) have seen widespread development, testing, and use in biological pest control in the United States. There has been no human safety problems attributed to the use of *baculoviruses*. Our request for an exemption from the requirement of a tolerance is strongly supported by the safety characteristics of *baculoviruses* in terms of lack of mammalian toxicity/allergenicity and the environmental safety provided in this study and in numerous studies conducted in the United States and abroad.

2. *Infants and children*. Both *baculovirus* types or genera (GVs and NPVs) have seen widespread development, testing, and use in biological pest control in the United States. There have been no safety problems for infants and children that have been attributed to the use of *baculoviruses*. Our request for an exemption from the requirement of a tolerance is strongly supported by the safety characteristics of *baculoviruses* in terms of lack of mammalian toxicity/allergenicity and the environmental safety provided in this study and in numerous studies conducted in the United States and abroad.

G. Effects on the Immune and Endocrine Systems

There is no known information which suggests that *Mamestra configurata* NPV will have an effect on the immune and endocrine systems.

H. Existing Tolerances

There are no known tolerances, tolerance exemptions or exemptions from the requirement of a tolerance for *Mamestra configurata* NPV.

I. International Tolerances

There are no known international tolerances, international tolerance exemptions or international exemptions from the requirement of a tolerance for *Mamestra configurata* NPV.

[FR Doc. 00–7890 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–931; FRL–6550–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–931, must be received on or before May 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–931 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–931. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–931 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–931. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2000

James Jones

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

5E4499

EPA has received a pesticide petition (5E4499) from Rutgers, the State University of New Jersey, 681 U.S. Highway No. 1 South, New Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of diflubenzuron in or on the raw agricultural commodity rangeland grass at 6.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Uniroyal Chemical Company, 74 Amity Road, Bethany, CT 06525.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue in plants is adequately understood based on data from soybeans, oranges, and rice metabolism studies.

2. *Analytical method*. A practical analytical method for detecting and measuring levels of diflubenzuron in or on food with a limit of detection that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in rangeland grass. Rangeland grass samples are analyzed by high performance liquid chromotography and detected by UV–absorption at 254 nanometers liquid chromatography for quantitation of diflubenzuron residues at a limit of quantitation (LOQ) for the method on rangeland grass of 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Studies for diflubenzuron technical indicate the acute oral toxicity in rats and mice >4,640 milligrams/kilograms (mg/kg), and the acute dermal toxicity in rats is >10,000 mg/kg. The acute inhalation lethal concentration: $(LC)_{50}$ in rats is >35 mg/L (6 hours). Diflubenzuron technical is not an eye or skin irritant to rabbits, and is not a dermal sensitizer in guinea pigs.

2. *Genotoxcity*. Diflubenzuron did not show any mutagenic activity in point mutation assays employing *Salmonella typhimurium, S. cerevisiae,* or L5178Y mouse lymphoma cells. Diflubenzuron did not induce chromosomal aberrations in Chinese hamster ovary cells and it did not induce unscheduled DNA synthesis in human WI–38 cells. Diflubenzuron was also negative in mouse micronucleus and mouse dominant lethal assays and it did not induce cell transformation in Balb/3T3 cells.

3. *Reproductive and developmental toxicity*. In a rat reproduction study, diflubenzuron was fed to 2 generations of male and female rats at dietary concentrations of 0, 10, 20, 40, and 160 ppm. No effects were seen on parental body weight gain and there were no reproductive effects. A subsequent study was conducted on 1-generation (one litter) of rats at dietary concentrations of 0, 1,000 and 100,000 ppm. Systemic effects were seen in adults at these doses but there was no effect on reproductive parameters. The no observed adverse effect level (NOAEL) for reproductive toxicity was greater than 100,000 ppm (5 mg/kg/day).

In a rat developmental toxicity study, diflubenzuron was administered by oral gavage to pregnant female rats at dosage levels of 0, 1, 2, and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant Sprague Dawley rats at a dose of 0 and 1,000 mg/kg/day. No maternal toxicity was observed. The incidence of fetuses with skeletal abnormalities was slightly increased in the treated group, but was within historical background range. The NOAEL for maternal and developmental toxicity in rats was greater than 1,000 mg/kg/day.

Diflubenzuron was also administered by oral gavage to pregnant New Zealand white rabbits at dosage levels of 0, 1, 2, and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant rabbits at doses of 0 and 1,000 mg/kg/day. No maternal or developmental toxicity was seen. The NOAEL for maternal and developmental toxicity in rabbits was greater than 1,000 mg/kg/day.

4. *Subchronic toxicity*. A 4–week inhalation study and a 3–week dermal study were conducted. In the inhalation study, rats were exposed (nose only) to 10, 30, or 100 mg/m^3 for 6 hours per day, 5 days per week for 4 weeks. Treatment related findings were a slight reduction in erythrocytes, hemoglobin and hematocrit in male and female rats at a concentration of 100 mg/m^3 and an increase in total bilirubin in high dose female rats. There was no effect on methemoglobin concentration at any dose level. The NOAEL for subchronic inhalation toxicity was 30 mg/m^3.

5. *Chronic toxicity*. Diflubenzuron was given by capsule to male and female beagle dogs for 1–year at dose levels of 0, 2, 10, 50, and 250 mg/kg/day. Body weight gain was slightly reduced in females at 250 mg/kg/day. Absolute liver and spleen weights were increased in males given 50 and 250 mg/kg/day. A reduction in hemoglobin and mean corpuscular hemoglobin concentration, with an elevation in reticulocyte count, was seen at 50 and 250 mg/kg/day. Methemoglobin and sulfhemoglobin values were increased at doses of 10 mg/kg/day and greater. Histopathological findings were limited to pigmented macrophages and kupffer cells in the liver at doses of 50 and 250 mg/kg/day. The NOAEL for chronic toxicity in dogs was 2 mg/kg/day.

Diflubenzuron was fed to male and female Sprague Dawley rats for 2 years at dose levels of 0, 156, 625, 2,500, and 10,000 ppm. Methemoglobin values were elevated in female rats at all dose levels and in male rats at the two highest dose levels (HDL). Sulfhemoglobin was elevated in females, only, at dose levels of 2,500 and 10,000 ppm. Mean corpuscular volume (MCV) and reticulocyte counts were increased in high dose females. Spleen and liver weights were elevated at the two highest doses. Histopathological examination demonstrated an increase in hemosiderosis of the liver and spleen, bone marrow and erythroid hyperplasia and areas of cellular alteration in the liver. In another study, diflubenzuron was administered to male and female CD rats for 2 years at dose levels of 0, 10, 20, 40, and 160 ppm. Elevated methemoglobin levels were seen in high dose males and females. No additional effects, including carcinogenic findings, were observed. The NOAEL for chronic toxicity in rats was 40 ppm (2 mg/kg/day).

Carcinogenicity. A 91–week carcinogenicity study in CFLP mice was conducted at doses of 0, 16, 80, 400, 2,000, and 10,000 ppm. There was no increase in tumor incidence as a result of diflubenzuron administration. Target organ effects included: increased methemoglobin and sulfhemoglobin values, heinz bodies, increased liver and spleen weight, hepatocyte enlargement and vacuolation, extramedullary hemopoiesis in the liver and spleen, siderocytosis in the spleen and pigmented kupffer cells. A NOAEL for these effects was 16 ppm (2 mg/kg/day).

6. *Animal metabolism*. Diflubenzuron in rats at a single dose of 100 mg/kg and 5 mg/kg single and mutiple oral doses depicted limited absorption from the gastrointestinal tract. No major difference was observed between the single and multiple doses. In single dose treatments, after 7 days, 20 and 3% of the applied dose 5 and 100 mg/kg, respectively, were excreted in urine, while 79 and 98% of the applied dose 5 and 100 mg/kg, respectively, were eliminated in the feces. Very little bioaccumulation in the tissues was observed. In the feces, only unchanged parent compound was detected. Several metabolites were observed in the urine which are, among others, 2,6–diflurobenzoic acid (DFBA), 2,6–difluorophippuric acid, 2,6–difluorobenzamide (DFBAM), and 2–hydroxydiflubenzuron (2–HDFB). An unresolved peak that was characterized as p–chloroaniline (PCA) and/or p–chlorophenylurea (CPU) was found. This latter peak accounted for about 2% of the administered dose (5 mg/kg). To resolve if PCA and CPU are indeed metabolites of diflubenzuron, rats were administered a single oral dose, 100 mg/kg of 14C DFB. The major metabolites identified in rat urine were 4–chloroaniline–2–sulfate, accounting for almost 50% of the total radioactive residue (TRR) in the urine and N–(4–chlorophenyl)oxamic acid which

accounted for about 15% of the TRR. Neither CPU, PCA nor their N–hydroxyl derivatives were found in rat urine at a limit of detection of 23 ppb. As in the previous study diflubenzuron was the only residue found in the feces.

7. *Metabolite toxicology*. PCA hydrochloride for male and female F344/N rats, and PCA hydrochloride for male B6C3F1 mice under the condition of a 2–year gavage study showed evidence of carcinogenic activity. In addition to PCA, 4–chlorophenylurea (CPU) is also a potential minor metabolite of diflubenzuron.

8. *Endocrine disruption*. The standard battery of required studies has been completed and evaluated to determine potential estrogenic or endocrine effects of diflubenzuron. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. No such effects were noted in any of the studies with diflubenzuron.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. Since 1-day single dose oral studies in rats and mice indicated only marginal effects, an acute exposure risk assessment is not needed, as there were no significant acute effects observed.

a. *Diflubenzuron*. The chronic dietary exposure from diflubenzuron was estimated based on the average residue values from the various currently labeled raw agricultural commodities. Percent of crop treated was also factored into the estimate. The dietary exposure analysis was estimated based on 1989–92 USDA food consumption data.

The U.S. population (total), the dietary exposure of diflubenzuron was estimated as 0.000013 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as 0.000003 mg/kg/day and 0.000007 mg/kg/day, respectively. For children, the exposure was 0.000015 mg/kg/day and 0.000011 mg/kg/day for 1–6 year olds and 7–12 year olds, respectively.

b. *p–Chloroaniline*. The chronic dietary exposure from p–chloroaniline (PCA) which has been detected in some food products was also determined. Average residues from field trials for mushrooms and rice were used. Residues in liver were obtained from extrapolation of metabolism data to anticipated livestock dietary burdens. EPA has previously used a 2 percent in *vivo* conversion factor of DFB to PCA for foods derived from plant products. However, based on results of a recent rat metabolism study showing that no PCA is formed, this is no longer appropriate. The percent treated of each crop was also factored into the exposure estimate.

The U.S. population (total), the dietary exposure of PCA was estimated as <0.000001 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as <0.000001 mg/kg/day and 0.000001 mg/kg/day, respectively. For children 1–6 years old and 7–12 years old, the exposure was <0.000001 mg/kg/day.

ii. *Drinking water*. Diflubenzuron degrades in soil relatively quickly with aerobic half-life ranging from 3–7 days. Major degradates include difluorobenzoic acid (DFBA) and CPU. DFBA is further metabolized through decarboxylation and ring cleavage by soil microbes whereas CPU is slowly degraded to soil-bound entities. Under aerobic aquatic conditions, diflubenzuron has a half-life of 34 days with the main degradates being DFBA and CPU. In surface water, diflubenzuron is degraded by microbes with a half-life of 5–10 days. The soil mobility of diflubenzuron is considered quite limited based on a number of experimental studies as well as by computer modeling. CPU has also been shown to be relatively immobile in soil. Although DFBA shows mobility in soil, it is rapidly degraded. Therefore, based on results of laboratory and field studies, it is not likely that diflubenzuron or its degradates will impact ground water quality to any significant extent.

Based on EPA's PRZM/EXAMS modeling, the average annual mean concentration of diflubenzuron in surface water sources is not expected to exceed 0.05 ppb. The drinking water level of concern (DWLOC) for chronic (non-cancer) exposure to diflubenzuron in drinking water was determined as 699 parts per billion (ppb) for the U.S. population (total) and approximately 200 ppb for infants and children. The estimated maximum concentration of diflubenzuron in surface water (0.05 ppb) is much less than the DWLOCs as a contribution to chronic (non-cancer) aggregate exposure.

2. *Non-dietary exposure*. Diflubenzuron is a restricted use pesticide based on its toxicity to aquatic invertebrates. This restricted use classification makes it unavailable for use by homeowners. Occupational uses of diflubenzuron may expose people in residential locations, parks, or forests treated with diflubenzuron. Based on very low residues detected in forestry dissipation studies, low dermal absorption rate (0.05%), and extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risk, and will, therefore, not be included in the aggregate risk assessment.

D. Cumulative Effects

Uniroyal Chemical Company has considered the potential for cumulative effects of diflubenzuron and other substances with a common mechanism of toxicity. The mammalian toxicity of diflubenzuron is well defined. We are not aware of any other pesticide product registered in the U.S. that could be metabolized to p–chloroaniline. For this reason, consideration of potential cumulative effects of residues from pesticidal substances with a common mechanism of action as diflubenzuron is not appropriate. Thus, only the potential exposures to diflubenzuron were considered in the total exposure assessment.

E. Safety Determination

1. *U.S. population*. Dietary exposure to the U.S. population (total) from diflubenzuron was estimated at 0.000013 mg/kg/day. Based on the 0.02 mg/kg/day RfD (reference dose) derived from the dog chronic NOAEL of 2 mg/kg/day and a 100–fold safety factor, this dietary exposure is <0.1% of the RfD. Since estimated concentrations of diflubenzuron in drinking water are well below the drinking water levels of concern, aggregate exposure is not expected to exceed 100% of the RfD. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to diflubenzuron residues.

For PCA, dietary exposure to the U.S. population (total) was estimated as less than 0.000001 mg/kg/day. The risk from diflubenzuron-derived PCA can be estimated using a linear extrapolation of the dose-response from the rat chronic study conducted by the National Toxicology Program in which rats were dosed via gavage with p–chloroaniline [hydrochloride] for 24 months. EPA has determined the q1* as 0.0638, based on the combined sarcoma incidence in the spleen of male rats. In view of the results of recent CPU rat mechanistic and metabolism studies, and the diflubenzuron rat metabolism study, the dietary risk assessment included here considers only actual residues of PCA found in food and animal by-products. This is consistent with a parent compound, such as diflubenzuron, which is negative (Category E) for carcinogenicity. It is also consistent with EPA's manner of treatment of other active ingredients that are clearly negative for carcinogenicity. Using the q1* of 0.0638, the risk to the U.S. population (total) from dietary exposure

to diflubenzuron-derived PCA is 1.31 x 10^{-8}. This risk is below EPA's level of concern.

2. *Infants and children*. The same assumptions as for the U.S. population were used for the dietary exposure risk determination in infants and children. The dietary exposure of diflubenzuron was calculated as 0.000003 mg/kg/day and 0.000007 mg/kg/day respectively for nursing and non-nursing infants. These values are 0.2% and 0.4%, respectively of the RfD for diflubenzuron. The dietary exposure from diflubenzuron in children 1–6 and 7–12 years old was determined as 0.000015 mg/kg/day and 0.000011 mg/kg/day, respectively. These values are <0.1% of the RfD.

As previously discussed, the NOAELs for maternal and developmental toxicity in rats and rabbits were greater than 1,000 mg/kg/day, and the NOAEL for reproductive toxicity was greater than 5,000 mg/kg/day. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Uniroyal concludes that there is reasonable certainty that no harm will result in infants and children from aggregate exposure to residues of diflubenzuron and its conversion products containing the p–chloroaniline moiety.

F. International Tolerances

There is no Codex Alimentarius Commission Maximum Residue Level for Residues of diflubenzuron on range grass.

[FR Doc. 00–8262 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 28, 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 May 5, 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.: 3060–0400.

Title: Tariff Review Plan.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 45.

Estimated Time Per Response: 61 hours.

Frequency of Response: On occasion reporting, biennial and annual requirements.

Total Annual Burden: 2,745.

Total Annual Cost: N/A.

Needs and Uses: Local telephone companies are required to update their rates annually or biennially to reflect Federal Communications Commission (FCC) requirements. To reduce the regulatory burden on reporting Local Exchange Carriers (LECs) as well as reviewers, the Commission developed tariff review plans (TRPs). The TRPs set for the summary material that LECs must file to support revisions to the rates in their interstate access service rates. The TRPs display basic data on rate development in a consistent manner, thereby facilitating review of the LEC rate revisions by the Commission and interested parties.

As of August 1999, there were 151 tariff filing entities. Of these, there were 16 Class A LECs with regulated state and interstate telecommunications revenues of $100 million or more. These LECs file pursuant to price cap regulations under 47 CFR 61.43 of the Commission's rules. There were 29 LECs filing pursuant to rate of return regulation under 47 CFR 61.38 of the Commission's rules. One hundred and six (106) LECs with revenues less than $50 million file pursuant to 47 CFR 61.39 of the Commission's rules and are not required to submit a TRP. Thus, the number of filing entities is 45.

As stated above, the largest LECs, those with regulated state and interstate telecommunications revenue of $100 million or greater per year (Class A LECs), file pursuant to price cap regulation under § 61.43. This regulation was implemented in 1990 and has dramatically reduced the reporting burden of these companies, from a TRP of 173 pages to a TRP of 36 pages. The 29 LECs that file pursuant to § 61.38 file a TRP of 29 pages, which also represents a reduction in reporting burden compared to earlier years.

The TRP material is used by FCC staff to determine whether the access charges are just and reasonable as required by the Communications Act. If the information were not filed, the FCC would not be able to carry out its responsibility as required by the Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8366 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 24, 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 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0395.

Expiration Date: September 30, 2000.

Title: The ARMIS USOA Report; The ARMIS Service Quality Report; and The ARMIS Infrastructure Report.

Form No.: FCC Report Nos. 43–02; 43–05; 43–07.

Respondents: Business or other for-profit.

Estimated Annual Burden: 50 respondents; 929.52 hours per response (avg). 46,476 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: FCC Report 43–02 contains company-wide data for each account specified in the Uniform System of Accounts (USOA). It provides the annual operating results of the carriers' activities for every account in the USOA. (FCC Report 43–02 has 50 respondents, 637.6 hours per response (avg.), 31,880 total annual hours).

FCC Report 43–05 collects data at the study area and holding company levels and is designed to capture trends in service quality under price cap regulations. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. (FCC Report 43–05 has 12 respondents, 849 hours per response (avg.), 10,197.4 total annual hours).

FCC Report 43–07 is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. (FCC Report 43–07 has 8 respondents, 555 hours per response (avg.) 4,400 total annual hours). Obligation to respond: Mandatory.

OMB Control No.: 3060–0496.

Expiration Date: March 31, 2002.

Title: The ARMIS Operating Data Report.

Form No.: FCC Report 43–08.

Respondents: Business or other for-profit.

Estimated Annual Burden: 50 respondents; 160 hours per response (avg.); 8000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The ARMIS Operating Data Report consists of statistical schedules which are needed by the Commission to monitor network growth, usage, and reliability. Obligation to respond: Mandatory.

OMB Control No.: 3060–0511.

Expiration Date: September 30, 2000.

Title: ARMIS Access Report.

Form No.: FCC Report 43–04.

Respondents: Business or other for-profit.

Estimated Annual Burden: 150 respondents; 621 hours per response (avg.); 93,150 total annual burden.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations and access charges. Obligation to respond: Mandatory.

OMB Control No.: 3060–0512.

Expiration Date: September 30, 2000.

Title: The ARMIS Annual Summary Report.

Form No.: FCC Report No. 43–01.

Respondents: Business or other for-profit.

Estimated Annual Burden: 150 respondents; 135 hours per response (avg.); 20,250 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carriers and to perform routine analyses of costs and revenues on behalf of the Commission. Obligation to respond: Mandatory.

OMB Control No.: 3060–0513.

Expiration Date: September 30, 2000.

Title: ARMIS Joint Cost Report.

Form No.: FCC Report 43–03.

Respondents: Business or other for-profit.

Estimated Annual Burden: 150 respondents; 83 hours per response (avg.); 12,450 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The Joint Cost Report is needed to administer our Part 64 joint cost rules and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of nonregulated operations by the regulated operations. Obligation to respond: Mandatory.

OMB Control No.: 3060–0763.

Expiration Date: March 31, 2002.

Title: The ARMIS Customer Satisfaction Report.

Form No.: FCC Report 43–06.

Respondents: Business or other for-profit.

Estimated Annual Burden: 8 respondents; 720 hours per response (avg.); 5760 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The Customer Satisfaction Report collects data from carrier surveys designed to capture trends in service quality. Obligation to respond: Mandatory.

OMB Control No.: 3060–0410.

Expiration Date: June 30, 2000.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form No.: FCC 495A; FCC 495B.

Respondents: Business or other for-profit.

Estimated Annual Burden: 300 respondents: 40 hours per response; 12,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The Forecast of Investment Usage Report is used by carriers to submit the forecasts of investments used. The Actual Usage of Investment Report is used to submit the actual investments used. These reports are part of the Automated Reporting Management Information System (ARMIS). The information contained in these two reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibility to ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers. Obligation to respond: Mandatory.

Several of the ARMIS Reports have been revised pursuant to an Order issued in AAD 95–91, released December 15, 1999. The Order implemented changes to ARMIS necessitated by recent Commission orders and provides improved definitions, descriptions, and instructions that will lead to greater clarity and consistency in reporting by incumbent local exchange carriers. The Appendix to the Order contains all the revisions made to the reports. See AAD 95–91. For copies of the procedures and formats for the ARMIS reports, please call Barbara Van Hagen at 202–418–0849. Copies of the procedures and formats may also be obtained via the Internet at http://www.fcc.gov/ccb/armis.

OMB Control No.: 3060–0076.

Expiration Date: February 28, 2000.

Title: Annual Employment Report for Common Carriers.

Form No.: FCC Form 395.

Respondents: Business or other for-profit.

Estimated Annual Burden: 4000 respondents; 1 hour per response (avg.); 4000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The Annual Employment Report is a data collection device for enforcement and assessment of the Commission's EEO Rules. All common carrier licensees or permittees with sixteen (16) or more full-time employees are required to file this report and retain it for a two-year period. The report identifies each carrier's staff by gender, race, color and/or national origin in each of nine major job categories. The information describes applicant's compliance with the EEO rules. The information, in addition to being useful for the Commission's purposes, has also been used by public interest groups, NTIA, the Equal Employment Opportunity Commission, the Congress and the U.S. Commission on Civil Rights to assess progress in accordance with their particular objectives. FCC Form 395 has been revised to incorporate the new OMB expiration date. Copies of the revised edition of the form are available via the Internet at *www.fcc.gov/formpage.html.* Printed copies of the form may be obtained either by writing to the Commission's Forms Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20431, or by calling telephone number 1–800–418–3676 and leaving a request on the answering machine provided for that purpose. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0921.

Expiration Date: August 31, 2000.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 20 respondents; 8 hours per respondent (avg.); 160 hours total annual burden.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced services on a reasonable and timely basis are requested to include information in accordance with the criteria specified in CC Docket 98–147, Fourth Report and Order and Memorandum Opinion and Order, released February 11, 2000.

A BOC must include the following criteria to the extent applicable in any request for LATA boundary modification to supply advance services: (i) The customer and type of customer to be serviced; (ii) the specific service or services currently provided, or to be provided, to that customer; (iii) the capacity required to provide the service; (iv) the protocols to be used to provide the service; (v) the physical mode of transport; (vi) the path that the network would take if the LATA modification were to be granted, with a map of the proposed modification indicating the location of the nearest NAP; (vii) efforts made to obtain interLATA access from an interexchange carrier (IXC), or other provider of interLATA services; and (vii) any response, or offer to supply advanced service, received from another provider of interLATA transport. The BOC should describe the quality of the service offered by available interLATA providers; the affordability of the service; and include any other information that may be needed on a case by case basis. See CC Docket No. 98–147 for complete details on criteria. The Commission will use this information to review the petitions.

In order to review request for LATA modifications promptly and efficiently, it is necessary that BOCs provide the information specified in the Order. The criteria set forth in the Order will serve to ease the petition process on BOCs by providing guidelines that will service to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition review process by ensuring that petitioners will provide all of the information the Commission needs to properly review the requests. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0804.

Expiration Date: September 30, 2000.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467 and 468.

Respondents: Business or other for-profit.

Estimated Annual Burden: 14,700 respondents; 3.94 hours per response (avg.); 58,050 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, one being FCC form 465. FCC Form 465 was recently revised, among other things, to remove the data element concerning consortia as each health care provide now files this information individually. Health care providers must now certify their compliance with state and local procurement rules. Other items on the form have been renumbered and reorganized to enhance the flow of information. Rural health care providers ordering discounted telecommunications services under the universal service program must submit FCC Form 465. Rural health care providers must certify their eligibility to receive discounted telecommunication services. Call RHCD at 800–229–5476 for questions concerning or copies of FCC Forms 465, 466, 467 and 468. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0855.

Expiration Date: August 31, 2000.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 98–171.

Form No.: FCC Form 499.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5500 respondents; 7.2 hours per response (avg.); 40,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: All contributors to the federal universal service support mechanisms, the TRS Fund, the cost recovery mechanism for numbering administration, and the cost recovery mechanism for the shared costs of local number portability must file the revised Telecommunications Reporting Worksheet, FCC Form 499–A) (April 2000 Worksheet). Contributors to the mechanisms include every telecommunications carrier providing interstate telecommunications and certain other providers of interstate telecommunications for a fee. Data filed on the April 2000 Worksheet will be used to calculate contributions to the universal service support mechanisms, as well as to the TRS Fund, the cost recovery for numbering administration, and the cost recovery for the shared costs of local number portability. Copies of the April 2000 Worksheet (FCC Form 499–A) and instructions may be downloaded from the Commission's Forms Web Page (*www.fcc.gov/formpage.html*). Copies may also be obtained from NECA at (973) 560–4400. Obligation to respond: Mandatory.

OMB Control No.: 3060–0147.

Expiration Date: February 28, 2003.

Title: Section 64.804—Extension of Unsecured Credit for Interstate and

Foreign Communications Services to Candidates for Federal Office.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13 respondents; 8 hours per response (avg.); 104 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a candidate or person on behalf of such candidates for Federal office must file with the FCC a report including due and outstanding balances. The information is used for monitoring purposes. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8342 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2397]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 28, 2000.

Petition for Reconsideratiaon have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by April 20, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45)

Number of Petitions Filed: 1

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8344 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2398]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

March 30, 2000.

Petition for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by April 20, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies (MM Docket No. 98–204)

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8345 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–M

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, NW., 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.: 203–011443–003.

Title: Space Charter and Cooperative Working Agreement Between NYK and WW Lines.

Parties: Wallenius Wilhelmsen Lines AS. Nippon Yusen Kaisha.

Synopsis: The amendment revises the agreement by deleting NYKNOS Joint Service as a party to the agreement and substitutes WW Lines. The amendment restates and changes the name of the agreement, as well as providing for authority for the parties to discuss and voluntarily agree on rates in the trade between the U.S. and the Middle East.

Agreement No.: 217–11699.

Title: CMA CGM/Wan Hai Lines Ltd. Cooperation Agreement.

Parties: CMA CGM S.A. Wan Hai Lines Ltd.

Synopsis: Under the proposed agreement, the parties agree to charter slots to each other on vessels operating in the trades between the U.S. West Coast and ports in the Far East in the Japan/Singapore/South East Asia range. The agreement authorizes the parties to consult on the number and size of vessels, sailings, schedules, and port calls as well as certain cooperative activities involving chartering of space, facilities and supplies. The parties request expedited approval.

By Order of the Federal Maritime Commission.

Dated: March 31, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–8359 Filed 4–4–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary 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 the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Providence Services Inc., 8565 N.W. 68th Street, Miami, FL 33166; Officer: Rodolfo Lang, President (Qualifying Individual)

Fulway International, Inc. d/b/a Air-Sea, International Logistics, Inc., 15355 Vantage Parkway W., Suite 103, Houston, TX 77032; Officer:

Mengmeng Liu, President (Qualifying Individual)
Sky 2 C Freight Systems, Inc., 39655 Trinity Way, #3108, Fremont, CA 94538; Officer: Tarun Tandon, Director (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Alex Nichols Agency, division of National Horse Transfer, Inc., 31 Plainfield Avenue, Elmont, NY 11003; Officers: Ronald Beckerman, Vice President (Qualifying Individual), William A. Nichols, President
LRG International, Inc., 8428 Sunstate Street, Tampa, FL 33634; Officer: Henrik A. Jorgensen, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Import logistics, Inc., 3847 Exchange Avenue, Aurora, IL 60504; Officers: Carol Gallagher, Director (Qualifying Individuals), Colin P. Hann, President
P-Serv Technologies, Inc., 4473 Willow Road, Suite 110, Pleasanton, CA 94588; Officer: Mitsuko Mizushima, CEO (Qualifying Individual)

Dated: March 31, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–8360 Filed 4–4–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of issuance of Formal Interpretation 17.

SUMMARY: The Premerger Notification Office (''PNO'') of the Federal Trade Commission (''FTC''), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''DOJ''), is adopting a Formal Interpretation of the Hart-Scott-Rodino Act, (''the HSR Act,'' ''the Act''), which requires persons planning certain mergers, consolidations, or other acquisitions to report information about the proposed transactions to the FTC and DOJ in order to allow for effective premerger antitrust review. The Act exempts from Hart-Scott-Rodino premerger review certain classes of acquisitions that require premerger competitive review by a specialized regulatory agency. This Interpretation describes the PNO's position regarding transactions that may occur under the recently enacted Gramm-Leach-Bliley Act that have some portions subject to advance competitive review by a banking agency and other, non-bank portions that are not subject to such review. Under the Interpretation, the non-bank portion of such a transaction is subject to the reporting requirements of the HSR Act regardless of whether the non-bank business is housed in an affiliate of a financial holding company or a financial subsidiary of a bank. The Interpretation also addresses HSR treatment of certain transactions in which portions of the transaction require approval under different sections (section 3 and section 4) of the Bank Holding Company Act. This Interpretation does not address questions concerning how to apply the HSR rules to the portion of a mixed transaction that is subject to the HSR Act. These issues will be addressed by the PNO on a case-by-case basis.[1]

DATES: Formal Interpretation 17 is effective on April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, telephone (202) 326–2846, or Thomas F. Hancock, Attorney, telephone (202) 326–2946; Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 17 is set out below:

FORMAL INTERPRETATION 17, PURSUANT TO § 803.30 OF THE PREMERGER NOTIFICATION RULES, 16 CFR § 803.30, REGARDING FILING OBLIGATIONS FOR CERTAIN ACQUISITIONS INVOLVING BANKING AND NON-BANKING BUSINESSES UNDER THE (c)(7) AND (c)(8) EXEMPTIONS OF THE HART-SCOTT-RODINO ACT AS AMENDED BY THE GRAMM-LEACH-BLILEY ACT

Pursuant to § 803.30 of the Hart-Scott-Rodino premerger notification rules (''the rules''), the Premerger Notification Office (''PNO'') of the Federal Trade Commission (''FTC''), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''DOJ'', collectively, ''the enforcement agencies''), issues this formal interpretation of the Hart-Scott-Rodino Act, as amended.

[1] Parties wishing to determine the application of the HSR Act and the Rules to a particular set of facts will find source materials on the FTC Web site at *www.ftc.gov.* Parties may also call the PNO for advice at (202) 326–3100.

The Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act, Public Law 106–102, was signed into law by President Clinton on November 12, 1999. Title I of Gramm-Leach-Bliley, Facilitating Affiliation Among Banks, Securities Firms and Insurance Companies, generally became effective March 11, 2000. Under the new law, bank holding companies and banks are allowed to affiliate with companies that participate in financial services markets that were previously off limits to such entities. In particular, Gramm-Leach-Bliley repeals the restrictions on banks affiliating with securities firms contained in sections 20 and 32 of the Glass-Steagall Act. The statute creates a new ''financial holding company'' category under section 4(k) of the Bank Holding Company Act (''BHCA''). Such holding companies can engage in a statutorily provided list of financial activities, including insurance and securities underwriting and agency activities, merchant banking and insurance company portfolio investment activities. Other financial activities and activities incidental to financial activities may be approved if the Federal Reserve Board and the Treasury Department agree. Activities that are ''complementary'' to financial activities are also authorized and such activities may be specified by the Federal Reserve Board at a later date. A bank holding company that does not become a financial holding company can continue to engage in activities closely related to banking, such as trust services, data processing services, investment advising and ATM network ownership, under section 4(c)(8) of the BHCA.

Gramm-Leach-Bliley also allows a national bank that meets certain standards to engage in the same new financial activities in ''financial subsidiaries,'' except for insurance underwriting, merchant banking (which may be approved as a permissible activity beginning five years after enactment), insurance company portfolio investments, and, unless permitted by other law, real estate development and real estate investment. Other financial activities and activities incidental to financial activities may be approved if the Federal Reserve Board and the Treasury Department agree. The aggregate assets of all financial subsidiaries must not exceed 45% of the parent bank's assets or $50 billion, whichever is less. National banks may continue to have traditional operating subsidiaries. Gramm-Leach-Bliley prohibits operating subsidiaries of

national banks from doing anything that a bank cannot do directly.[2]

Amendments to the HSR Act Made by Gramm-Leach-Bliley

The HSR Act exempts from HSR premerger antitrust review several classes of acquisitions that are ''already subject to advance antitrust review'' by other agencies, thus avoiding duplicative reporting. See H.R. Rep. No. 1373, 94th Cong., 2d Sess. 6 (1976).

Section 133(c) of Gramm-Leach-Bliley amended the HSR Act's (c)(7) exemption, pertaining to transactions which require agency approval under section 3 of the BHCA, section 18(c) of the Federal Deposit Insurance Act (''FDI Act''), or section 10(e) of the Home Owners'' Loan Act, and the HSR Act's (c)(8) exemption, pertaining to transactions which require agency approval under section 4 of the BHCA or section 5 of the Home Owners' Loan Act. Specifically, the HSR Act's (c)(7) exemption, 15 USC § 18a(c)(7), as amended by section 133(c)(1) of Gramm-Leach-Bliley, provides an exemption from HSR requirements for ''transactions which require agency approval under * * * section 1828(c) of title 12 [section 18(c) of the FDI Act], or section 1842 of title 12 [Section 3 of BHCA], except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956.'' (Language added by section 133(c)(1) is italicized.)

The HSR Act's (c)(8) exemption, 15 USC § 18a(c)(8), pertaining to transactions which require agency approval under section 4 of the BHCA, is amended in a parallel fashion by section 133(c)(2) of Gramm-Leach-Bliley. Section (c)(8) of the HSR Act exempts such transactions provided that the materials filed with the agency are contemporaneously submitted to the enforcement agencies at least thirty days prior to consummation.

Treatment of Mixed Bank and Non-Bank Transactions

It has always been the case that some transactions are ''mixed,'' that is, have some aspects or portions subject to regulatory agency premerger competitive review and approval and other aspects or portions not. Such mixed transactions can and have occurred involving all regulated industries, including banking, as discussed below. The PNO's longstanding position has been to treat the portion of a mixed transaction not subject to advance competitive review and approval by a regulatory agency as being subject to the HSR Act.[3] Moreover, when the Commission (with the concurrence of the Department of Justice) promulgated § 802.6(b) of the rules in 1983 to exempt from the HSR Act ''any transaction which requires approval by the [CAB] prior to consummation,'' the agencies made clear in the rule that the non-aeronautic part of a transaction—which did not require such approval—was essentially to be treated as a separate transaction potentially reportable under the HSR Act.

The PNO views the amendments of the HSR Act made by section 133(c) of the Gramm-Leach-Bliley Act as confirming that the PNO's longstanding treatment of mixed transactions is to be applied to transactions involving the banking industry. As described below, the non-bank portion of a transaction is subject to the reporting requirements of the HSR Act, regardless of whether the non-bank business is housed in an affiliate of a financial holding company or a financial subsidiary of a bank.[4]

The Joint Explanatory Statement of the Committee of Conference contained in the Conference Report demonstrates that Congress considered section 133(c) of Gramm-Leach-Bliley to be a clarification and affirmation of the existing treatment of mixed transactions under HSR:

This clarification for the new [financial holding company] structure is consistent with, and does not disturb, existing law and precedents under which mergers involving complex corporate entities, some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not, are considered according to agency jurisdiction over their respective parts, so that normal H–S–R Act requirements apply to those parts that do not fall within the specialized agency's specific authority. See 16 C.F.R. § 802.6.

Cong. Rec. H11296 (Nov. 2, 1999).

The PNO's interpretation of the HSR exemptions amended by Gramm-Leach-Bliley is further guided by the explanatory Floor Remarks of House Judiciary Committee Chairman Hyde:

Under current law, bank mergers are reviewed under special bank merger statutes, and they do not go through the Hart-Scott-Rodino merger review process that covers most other mergers. Now banks will be able to get into other businesses which they have not been able to do before.

The principle that we have followed is that when mergers occur, the bank part of that merger will be judged under the current bank merger statutes, and we do not intend any change in that process or in any of the agencies' respective jurisdictions. The non-bank part of that merger will be subject to the normal Hart-Scott-Rodino merger review by either the Justice Department or the Federal Trade Commission.

This is, in all likelihood, the result that would have been obtained anyway. Hybrid transactions involving complex corporate entities—some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not—have occurred in the past. In those cases, the various parts of the consolidation were considered according to agency jurisdiction over the respective parts, so that normal Hart-Scott-Rodino Act requirements applied to those parts that did not fall within the specialized agency's specific authority. See, *e.g.,* 16 CFR § 802.6. I think the precedents would have already dictated the desired result here.

In short, under this bill and the precedents, no bank is treated differently than it otherwise would be because it has some other business within its corporate family. Likewise, no other business is treated differently than it otherwise would be because it has a bank within its corporate family.

Cong. Rec. H11549 (Nov. 4, 1999).

The HSR Act (c)(7) exemption, as amended, expressly addresses acquisitions in which a bank and its financial affiliate are being acquired by a financial holding company (the affiliate structure). The financial affiliate portion of that transaction is not exempt from the HSR Act, because it is subject to section 4(k) and does not require Federal Reserve Board approval under section 3 of the BHCA. Gramm-Leach-Bliley does not expressly address acquisitions of a bank with a financial subsidiary by another bank or holding

[2] Gramm-Leach-Bliley also recognizes that state banks may have subsidiaries that engage in the same activities as financial subsidiaries, subject to certain restrictions. It does not eliminate existing authority for subsidiaries of state banks to engage in state-authorized activities not permissible for national banks or their subsidiaries, subject to approval by the Federal Deposit Insurance Corporation.

[3] This PNO position has been noted by HSR practitioners and commentators. See, *e.g.,* American Bar Association Section of Antitrust Law, Premerger Notification Practice Manual (1991 ed.) Interpretations 33, 36; S. Axinn, Acquisitions Under the Hart-Scott-Rodino Antitrust Improvements Act (1996) § 6.06[3][b].

[4] Of course, a comparable approach to mixed transactions also applies to transactions involving thrifts or thrift holding companies.

company (the subsidiary structure). Chairman Hyde explained the absence of an express clarification regarding the subsidiary structure similar to the clarification that expressly addresses the affiliate structure:

As the shape of the new activities in which banks were going to be permitted to engage through operating subsidiaries became clear in conference, the conferees ideally would have further revised the House language to make a similar clarification, regarding consolidations of non-banking entities that are operating subsidiaries of merging banks. But the operating subsidiary situations so closely parallels the precedents I have mentioned that a clarification for that situation was probably unnecessary.

Of course, whatever aspect of a banking merger is not subject to normal Hart-Scott-Rodino premerger review will be subject to the alternative procedures set forth in the Bank Merger Act and the Bank Holding Company Act, including the automatic stay. So one way or another, there will be some avenue for effective premerger review by the antitrust agencies. These alternative procedures would be in some ways more potentially disruptive to the merging banking entities, particularly when the antitrust concern involves non-banking entities. But it is our intent that the precedents will be followed.

Cong. Rec. H11549, Floor Statement of Chairman Hyde (Nov. 4, 1999).

Accordingly, consistent with the intent of Congress, the PNO interprets the HSR Act, as amended by section 133(c) of Gramm-Leach-Bliley, as reaching the non-bank portion of a transaction when housed in a financial subsidiary of a bank as well as when housed in an affiliate of a financial holding company. Thus, in acquisitions of a bank with a financial subsidiary (or of a holding company in which a bank has a financial subsidiary) by another bank or holding company, the acquisition of the financial subsidiary will be reportable under the HSR Act if the applicable size-of-person and size-of-transaction tests are met and no other exemption applies.

A Related Point

As noted above, the HSR Act (c)(7) exemption covers transactions which require agency approval under section 3 of the BHCA. The HSR Act (c)(8) exemption applies to transactions which require agency approval under section 4 of the BHCA if copies of materials filed with such agency are contemporaneously filed with the enforcement agencies at least 30 days prior to consummation. If a bank holding company acquired another bank holding company that has one or more so-called ''4(c)(8) affiliates,'' [5] approvals would be required under both section 3 and section 4 of the BHCA.[6] The question has arisen—and may continue to arise with Gramm-Leach-Bliley in effect—whether parties to such a transaction need comply with the copies/waiting conditions of the (c)(8) exemption for the section 4 part of the transaction or may instead regard (c)(7) as covering the entire transaction. Based on discussions with Federal Reserve Board staff, we believe that in this type of transaction, the Federal Reserve Board review and approval under section 3 of the BHCA does not entail competitive review and approval of the section 4 portion of the transaction. Accordingly, parties to a transaction that involves approvals under section 3 and section 4 of the BHCA should comply with the copies/waiting conditions of the HSR Act (c)(8) exemption for the section 4 part of the transaction.[7]

The following Examples illustrate the application of this Formal Interpretation. In these Examples, ''subject to HSR'' means that the parties will have to comply with HSR notification and waiting requirements if applicable size criteria and thresholds are met and no other exemption applies.

1. Financial Holding Company A acquires Bank B. B does not own any financial subsidiaries. This is a transaction which requires Federal Reserve Board approval under section 3 of the BHCA and there is no non-bank part of this merger. The transaction is exempt from the HSR Act under (c)(7).

2. Financial Holding Company A acquires Securities Company B. This transaction does not require banking agency approval under any of the relevant banking statutes, and is thus not covered by the HSR Act (c)(7) or (c)(8) exemptions. The acquisition is subject to the HSR Act.

3. Financial Holding Company A acquires Financial Holding Company B. B owns banks and financial affiliates, including insurance companies and securities companies. While A's acquisition of B's banks is exempt under HSR section (c)(7), the acquisition of the financial affiliates is subject to HSR. This situation is expressly addressed by the language of section (c)(7) as amended by Gramm-Leach-Bliley. The acquisition of the financial affiliates is a portion of a transaction that is subject to section 4(k) of the BHCA and does not require agency approval under section 3 of the BHCA. If in this Example B owned 4(c)(8) affiliates such as thrifts in addition to banks and financial affiliates, A's acquisition of B's 4(c)(8) affiliates would require Federal Reserve Board approval under section 4 of the BHCA. HSR Act section (c)(8) as amended by Gramm-Leach-Bliley would exempt A's acquisition of B's 4(c)(8) affiliates (provided that A complied with the requirements of that section—see Example 7), but the acquisition of the financial affiliates would still be subject to HSR. Under HSR Act sections (c)(7) and (c)(8) as amended, the acquisition of the financial affiliates would be a portion of a transaction that is subject to section 4(k) of the BHCA and does not require agency approval under section 3 or section 4 of the BHCA.

4. Securities company A will acquire Bank B. B does not own any financial subsidiaries. In order to make the acquisition, A must apply to become a financial holding company. Because the acquisition of B requires Federal Reserve Board approval under section 3 of the BHCA and there is no non-bank business being acquired, this transaction is exempt under HSR Act section (c)(7). See Example 1.

5. Bank A acquires Securities Company B as a financial subsidiary under Gramm-Leach-Bliley. This transaction does not require banking agency approval under any of the banking statutes referenced in the HSR Act, and is thus not exempted by HSR Act sections (c)(7) or (c)(8). The acquisition is subject to HSR. See Example 2. Note that if Bank A, instead of acquiring a financial subsidiary, had acquired Mortgage Company B as a traditional operating subsidiary, either before or after the Gramm-Leach-Bliley Act takes effect, that transaction also would not require banking agency approval under any of the relevant banking statutes specified in the HSR Act (c)(7) and (c)(8) exemptions, and thus would be subject to HSR.

6. Bank A from Example 5, which now holds Financial Subsidiary B, is acquired by Bank C. While C's acquisition of A requires agency approval (by the Office of the

[5] A bank holding company can acquire a company engaged in activities closely related to banking if it gets approval under section 4 of the BHCA.

[6] By way of contrast, when a financial holding company acquires another financial holding company that has section 4(k) financial affiliates, the acquisition of the financial affiliates does not require Federal Reserve Board approval.

[7] In the past, the PNO informally advised that the (c)(7) exemption could be relied on exclusively in such a transaction. This advice was based on the belief that all portions of the transaction were reviewed by the Federal Reserve Board under section 3. This view is no longer held by the PNO.

Comptroller of the Currency, Federal Reserve Board or Federal Deposit Insurance Corporation, depending on whether C is a national bank, state member bank, or state non-member bank) under section 18(c) of the FDI Act and is exempt under HSR section (c)(7), the acquisition of financial subsidiary B is subject to HSR. If in this example C is not a Bank but rather a financial holding company, bank holding company or a securities firm, the result is the same. The non-bank portion of a merger is subject to HSR regardless of whether the non-bank business is housed in an affiliate of a financial holding company or a financial subsidiary of a bank.

7. A and B are bank holding companies that have not become financial holding companies under Gramm-Leach-Bliley. They may engage in activities closely related to banking under section 4(c)(8) of the BHCA, but not in the broader array of activities allowed under section 4(k). A acquires B, including the banks owned by B and non-bank section 4(c)(8) affiliates. The acquisition of the banks requires Federal Reserve Board approval under section 3 of the BHCA and is exempt under HSR Act section (c)(7). The acquisition of the non-bank affiliates requires Federal Reserve Board approval under section 4 of the BHCA and is exempt under HSR Act section (c)(8) if copies of all information and documents filed with the Federal Reserve Board are filed contemporaneously with the FTC and DOJ at least 30 days prior to consummation. Although the parties need not make HSR filings, (c)(7) does not exempt the entire transaction, and the copies/30-day requirements of the (c)(8) exemption must be observed for the non-banking affiliates.

8. A is a national bank that has one or more operating subsidiaries but does not have any financial subsidiaries. Under Gramm-Leach-Bliley, A's operating subsidiaries cannot engage in any activities that A cannot engage in directly. If A is to be acquired by another entity, the PNO will view this for purposes of HSR as a purely banking transaction that requires agency approval under section 3 of the Bank Holding Company Act or section 18(c) of the FDI Act and not as a mixed transaction. The entire transaction will be exempt under HSR Act section (c)(7).

9. Ten entities plan to form and each have a 10% interest in a new corporation, A, which will own and operate an ATM network. Formation of joint venture corporations is generally analyzed under § 801.40 of the rules, which may require one or more of the contributors to the joint venture to file under the HSR Act for the acquisition of voting securities of the joint venture. For HSR purposes, the formation of A involves ten potentially reportable acquisitions. Each contributor that is a bank holding company will require Federal Reserve Board approval for its acquisition under section 4 of the BHCA, and accordingly, each such acquisition is exempt under HSR Act section (c)(8). In addition, a special rule, § 802.42, applies, if at least one of the ten entities forming A is a bank holding company whose acquisition of A is exempt pursuant to the (c)(8) exemption. In that case, under § 802.42, the contributors that are not bank holding companies and whose acquisitions of A are not exempted by HSR Act section (c)(8) receive a partial exemption. These entities can file the affidavits described in Rule 802.42(a) in lieu of filing HSR Forms, but otherwise remain subject to the Act and Rules (*e.g.,* waiting period; second requests).

10. Corporation A from Example 9, an ATM network owned by ten entities, now plans to acquire another ATM network, B. For HSR purposes, there will be one acquisition with A as the acquiring person. If any of the ten entities that own A is a bank holding company, it will need Federal Reserve Board approval under section 4 of the BHCA. The PNO will apply the rationale of the HSR Act section (c)(8) and § 802.42 in such an instance. Accordingly, the PNO will treat A's acquisition of B as exempt under HSR Act section (c)(8) if: (i) At least one of the entities owning A must get Federal Reserve Board approval under section 4 of the BHCA; and (ii) each such entity that must get such Federal Reserve Board approval complies with the requirements of HSR section (c)(8) by filing copies of all information and documentary material filed with the Federal Reserve Board with the FTC and DOJ contemporaneously and at least 30 days prior to consummation of the proposed transaction. If A's acquisition of B does not require any approval under section 4 of the BHCA (because none of the owners of A is a bank holding company), then A's acquisition of B will be subject to HSR. The PNO believes that this treatment of mergers of ATM networks assures effective premerger competitive review while avoiding duplicative review and minimizing burdens and costs for the parties.

Donald S. Clark,

Secretary.

[FR Doc. 00–8426 Filed 4–4–00; 8:45 am]

BILLING CODE 6750–01–P

GENERAL ACCOUNTING OFFICE

[Documents No. JFMIP–SR–00–02]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft entitled ''Property Management Systems Requirements,'' dated April 2000. The draft is the first FFMSR document to address standard requirements for federal agency property management systems. The document is intended to assist agencies when developing new property management systems and when improving or evaluating existing property management systems. It provides the baseline functionality that property management systems must have a support agency missions and comply with laws and regulations. The final issuance of this JFMIP Property Management Systems Requirements document will provide the functional requirements definition necessary for agencies to comply with mandates of the Chief Financial Officers Act and the Federal financial Management Improvement Act.

DATES: Comments are due by May 31, 2000.

ADDRESSES: Copies of the exposure draft have been mailed to agency senior financial officials, together with a cover memo listing the questions on which JFMIP is soliciting feedback. The exposure draft and cover memo are available on the JFMIP website: *http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm.* Comment should be addressed to JFMIP, 1990 K Street, NW, Suite 430, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Dorothy Sugiyama, (202) 219–0536 or via Internet: *dorothy.sugiyama@gsa.gov*

SUPPLEMENTARY INFORMATION: The Federal Financial Management Improvement Act (FFMIA) of 1996 mandated that agencies implement and maintain systems that comply substantially with Federal Financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet to be substantially in compliance with systems requirements provisions

under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 00–8332 Filed 4–4–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–31]

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 Project

1. List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products—(0920–0338)—Renewal—Office of Smoking and Health (OSH)—Oral use of smokeless tobacco represents a significant health risk which can cause cancer and a number of noncancerous oral conditions, and can lead to nicotine addiction and dependence. Furthermore, smokeless tobacco use is not a safe substitute for cigarette smoking.

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has been delegated the authority for implementing major components of the Department of Health and Human Services' (HHS) tobacco and health program, including collection of tobacco ingredients information. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Tobacco Health Education Act of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco products to provide the Secretary of Health and Human Services with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients. The total annual burden is 286 hours.

The total cost to respondents is $22,000. This cost is based on an average of $1,972 per company.

Respondents	Number of respondents	Number of responses	Average burden/response (in hours)	Total burden (in hrs.)
Tobacco Manufacturers	11	1	26	286
Total				286

2. List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—(0920–0210)—Renewal—The Office of Smoking and Health (OSH)—Cigarette smoking is the leading preventable cause of premature death and disability in our Nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases.

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has the primary responsibility for the Department of Health and Human Services' (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (15 U.S.C. 1336 Pub. L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients. The total annual burden is 2,660 hours.

The total cost to respondents is $189,000. This cost is based on an average cost of $13,491 per company.

Respondents	Number of respondents	Number of responses	Average burden/response (in hours)	Total burden (in hrs.)
Tobacco Manufacturers	14	1	190	2,660
Total				2,660

Dated: March 29, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–8308 Filed 4–4–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Household Report.

OMB No.: 0970–0060.

Description: The report is an annual activity which is required by law of Low Income Home Energy Assistance Program (LIHEAP) grantees for receipt of federal LIHEAP block grant funds. States, the District of Columbia, and the Commonwealth of Puerto Rico are required to report statistics for the previous federal fiscal year on the number and income levels of LIHEAP applicant and assisted households, and the number of LIHEAP assisted households with at least one member who is elderly, disabled or a young child. Insular areas receiving less than $200,000 annually in LIHEAP funds and Indian Tribal Grantees are required to submit data only on the number of households receiving heating, cooling, energy crisis, or weatherization benefits. The information is being collected for the Department's annual LIHEAP report to Congress. The data also provide information about the need for LIHEAP funds. Finally, the data are beginning to be used in the calculation of LIHEAP performance measures under the Government Performance Results Act of 1993.

Respondents: State Governments, Tribal Governments and Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Assisted Hhd. Report—LF	52	1	25	1300
Assisted Hhd. Report—SF	132	1	1	132
Applic. Hhd. Report	52	1	13	676
Estimated Total Annual Burden Hours:				2108

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comment on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 30, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–8296 Filed 4–4–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Novel Technologies for Noninvasive Detection, Diagnosis and Treatment of Cancer.

Date: April 26–28, 2000.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: C.M. Kerwin, PHD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.3983, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8319 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, National Cooperative Drug Discovery Group.

Date: April 10–12, 2000.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD.

Contact Person: Sherwood Githens, PHD, Scientific Review Administrator, National Institutes Of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institute of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8321 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Record Linkage Studies Utilizing Resources in Population Based Tumor Registries.

Date: March 31, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: to review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: C.M. Kerwin, PHD; Scientific Review Administrator; Special Review; Referral and Resources Branch; Division of Extramural Activities; National Cancer Institute; National Institutes of Health; 6116 Executive Boulevard; Room 8086; Rockville, MD 20892–7405; 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8322 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Resources Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council Executive Subcommittee.

Date: May 18, 2000.

Open: 8:00 a.m. to 9:00 a.m.

Agenda: To discuss policy issues.

Place: National Center for Research Resources, National Institutes of Health, Conference Room 3B13, Building 31, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Name of Committee: National Advisory Research Resources Council.

Date: May 18, 2000.

Open: 9:15 a.m. to 2:00 p.m.

Agenda: Report of Center Director and other issues related to Council business.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Closed: 2:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine,

93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8316 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: April 20, 2000.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892.

Contact Person: Andrew P Mariani, PHD, Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8320 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 12, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This Notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 13, 2000.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This Notice is being published less than 15 days prior to the meeting due to the timinig limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 18, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This Notice is being published less than 15 days prior to the meeting due to the timinig limitations imposed by the review and funding cycle.

(Catalogue of Federal Domesic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8312 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 18–19, 2000.

Closed: May 18, 2000, 8:30 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: May 18, 2000, 11 AM to 5 PM.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: May 19, 2000, 8:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, PHD, Acting Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 480–1852.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93–859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 28, 2000.

Laverne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8313 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Prenatal Malnutrition & Mental Retardation.

Date: April 10, 2000.

Time: 2:30 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8314 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 26–27, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Edward W. Schroder, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8315 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 14, 2000.

Time: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive; Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, PHD; Scientific Review Administrator; National Institutes of Health, NIAMS; Natcher Bldg., Room 5As25N; Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8317 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Noticed of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 7, 2000.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Kenwood Country Club, 5601 River Road, Bethesda, MD 20816.

Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8318 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on Substances, Mixtures and Exposure Circumstances Proposed for Listing in the Report on Carcinogens, Tenth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional agents, substances, mixtures and exposure circumstances for possible listing in the Report on Carcinogens (RoC), Tenth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, DHHS shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The scientific review of the nominated agents, substances, mixtures or exposure circumstances involves three separate scientific reviews: two Federal review groups and one non-government peer review body (a subcommittee of the NTP Board of Scientific Counselors) that meets in an open, public forum. Throughout the review process, multiple opportunities are provided for public input including at the Subcommittee meeting. In reviewing nominations for the RoC, all available data and public comments, which are relevant to application of the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances or for a change in a candidate's classification, are evaluated. The criteria used in the review process are as follows:

Known To Be Human Carcinogens

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between exposure to the agent, substance or mixture and human cancer.

Reasonably Anticipated To Be Human Carcinogens

There is limited evidence of carcinogenicity from studies in humans which indicates that causal interpretation is credible but that alternative explanations such as chance, bias or confounding factors could not adequately be excluded; or

There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors: (1) in multiple species, or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site or type of tumor or at onset; or

There is less than sufficient evidence of carcinogenicity in humans or laboratory animals; However, the agent, substance or mixture belongs to a well defined, structurally-related class of substances whose members are listed in a previous Report on Carcinogens as either a known to be human carcinogen, or reasonably anticipated to be human carcinogen or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive subpopulations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

A detailed description of the review procedures, including the steps in the formal review process, is available at *http://ntp-server.niehs.nih.gov* or can be obtained by contacting: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, email: jameson@niehs.nih.gov.

Public Comment Requested

The NTP is considering 11 agents, substances, mixtures and exposure circumstances for possible review in 2000, as either a new listing in or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Tenth Report. These nominations are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. The NTP solicits public input on these 11 nominations and asks for relevant information anyone may have concerning their carcinogenesis, as well as current production data, use patterns, or human exposure information. The NTP also invites interested parties to identify any scientific issues related to the listing of a specific nomination in the RoC that they feel should be addressed during the reviews. Comments concerning these nominations for listing in, changing the current listing in, or delisting from the Tenth Report on Carcinogens will be accepted through June 5, 2000. Individuals submitting public comments are asked to include relevant contact information (name, affiliation (if any), address, telephone, fax, and email). Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Additional Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for listing in or delisting from the Tenth and future RoCs. Nominations should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.), which support a nomination, should be provided or referenced when possible. Contact information for the nominator should also be included (name, affiliation (if any), address, telephone, fax, and email). Nominations should be sent to Dr. Jameson's attention at the address given above.

Dated: March 27, 2000.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR NOMINATIONS TO BE REVIEWED IN 2000 FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE TENTH REPORT ON CARCINOGENS

Nomination/CAS No.	Primary uses or exposures	To be reviewed for	Basis of nomination
Chloramphenicol (56–75–7)	Used widely as an antibiotic since the 1950s. Veterinary use of chloramphenicol has resulted in the occurrence of residues in animal-derived food.	Listing in the 10th Report.	Nominated by RG1 [1] based on the IARC [2] identification of chloramphenicol as a Group 2A–Probable Human Carcinogen (Vol. 50, 1990). IARC listing based on findings of limited evidence of carcinogenicity in humans based on case reports, which described an unusual succession of leukemia following chloramphenicol-induced aplastic anemia and bone-marrow depression.
Human Papillomaviruses (HPVs)	HPVs are small, non-enveloped viruses that contain a double-stranded, circular 8 kb DNA genome. HPV infections are common throughout the world, are highly host-specific and, with the exception of some ungulate papillomaviruses, infect only epithelial cells.	Listing in the 10th Report.	Nominated by RG1 [1] based on IARC [2] finding of sufficient evidence of carcinogenicity in human epidemiology studies and identifying certain human papillomaviruses as a Group 1—Known Human Carcinogen (Vol. 64, 1995). HPVs are found in over 90% of all invasive cervical cancers and in a high proportion of certain other anogenital cancers. Carcinogenicity in humans has been most firmly established for HPV–16, but strong evidence of carcinogenicity also exists for certain other HPV types.
Lead and Lead Compounds	Widespread uses which have included use in pipes for water distribution, lead-based paints, lead additives in gasoline, and many other applications.	Listing in the 10th Report.	Nominated by RG1 [1] based on recent published data that indicate an excess of cancers in workers exposed to lead and lead compounds.
Methyleugenol (93–15–2)	Flavoring agent used in jellies, baked goods, nonalcoholic beverages, chewing gum, candy, and ice cream. Also used as a fragrance for many perfumes, lotions, detergents and soaps.	Listing in the 10th Report.	Nominated by RG1 [1] based on recent NTP Technical Report (TR 491, 1998) reporting clear evidence of carcinogenic activity of methyleugenol in rats and mice based on the increased incidences of liver neoplasms in rats and mice, neuroendocrine tumors of the glandular stomach in male and female rats and male mice, and the increased incidences of kidney neoplasms, malignant mesothelioma, mammary gland fibroadenoma, and subcutaneous fibroma and fibroma or fibrosarcoma (combined) in male rats.
Nickel and Nickel Compounds including Metallic Nickel & Nickel Alloys.	Widely used in commercial applications for over 100 years.	Listing in the 10th Report.	Action required to complete review of Nickel and Nickel Compounds. This review will be of metallic nickel and nickel alloys. Review of nickel compounds for listing in the Report on Carcinogens was completed in 1998.

SUMMARY FOR NOMINATIONS TO BE REVIEWED IN 2000 FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE TENTH REPORT ON CARCINOGENS—Continued

Nomination/CAS No.	Primary uses or exposures	To be reviewed for	Basis of nomination
Estrogens, steroidal	Estrogens are widely used in oral contraceptives and in post-menopausal therapy for women.	Listing in the 10th Report.	Nominated by RG1 [1] based on IARC [2] identification of Estrogens, Steroidal as a Group 1–Known Human Carcinogen (Vol. 72, 1999) IARC listing based on a consistent, strongly positive association between exposure to a number of estrogenic substances and risk of endometrial and breast cancer in women.
Talc (14807–96–6) (Non-Asbestiform).	Talc (non-asbestiform) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing. Exposure to general population occurs through use of products such as cosmetics.	Listing in the 10th Report.	Nominated by RG1 [1] based on NTP Technical Report (TR 421, 1993) which reported clear evidence of carcinogenic activity of talc (non-asbestiform) based on increased incidences of alveolar/bronchiolar adenomas and carcinomas of the lung in female rats and also recently published epidemiology studies that suggests that talc exposure among pottery workers has been associated with lung cancer, and ovarian neoplasms in women.
Talc (14807–96–6) (Containing Asbestiform Fibers).	Talc (containing asbestiform fibers) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing.	Listing in the 10th Report.	Nominated by RG1 [1] based on IARC [2] identification of talc (containing asbestiform fibers) as a Group 1–Known Human Carcinogen (Sup 7, 1987). IARC listing based on the observed association between exposure to talc containing asbestiform fibers and mesothelioma in humans.
Trichloroethylene (TCE) (79–01–6).	Trichloroethylene is widely used as a solvent with 80–90% used worldwide for degreasing metals.	Upgrade to Known	Recommended by RG1 [1] to be upgraded to a known human carcinogen based on recent published data that indicate an excess of kidney cancers in workers exposed to trichloroethylene.
Broad Spectrum UV Radiation ...	Solar and artificial sources of ultraviolet radiation.	Listing in the 10th Report.	Review of UVA, UVB and UVC recommended by RG2 [3] based on earlier Report on Carcinogens review of solar UV radiation.
Wood Dust	It is estimated that at least two million people are routinely exposed occupationally to wood dust worldwide. Non-occupational exposure also occurs. The highest exposures have generally been reported in wood furniture and cabinet manufacture, especially during machine sanding and similar operations.	Listing in the 10th Report.	Nominated by the Occupational Safety and Health Administration based on IARC [2] identification of wood dust as a Group 1–Known Human Carcinogen (Vol. 62, 1995). IARC listing based on increases in cancer, particularly cancer of the nasal cavities and paranasal sinuses, associated with exposure to wood dust.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] International Agency For Research On Cancer (IARC).
[3] The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).
*Agencies from the NTP Executive Committee represented on RG2 include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Center for Toxicological Research of the Food and Drug Administration (NCTR/FDA), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH(NIEHS/NIH)

[FR Doc. 00–8310 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on 9 Substances Proposed for Listing in or Delisting from the Report on Carcinogens, Tenth Edition

Background

The National Toxicology Program (NTP) solicits final public comments on additional agents, substances, mixtures and exposure circumstances for listing in or delisting from the Report on Carcinogens, Tenth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301 (b) (4) of the Public Health Service Act, as amended, provides that the Secretary, (HHS), shall publish a biennial report which contains a list of all substances (1) which either are

known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

In 1999 and early 2000, nine substances were reviewed for listing in the Tenth Report. This review included two Federal and one non-government, scientific peer reviews and public comment and review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate substances in the Report. The criteria used in the review process and the detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Home Page web site at http://ntp-server.niehs.nih.gov/ or by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Room 3217, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–2242, email: jameson@niehs.nih.gov.

Public Comment Requested

The nominated substances reviewed in 1999 and early 2000 are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews of the nominations. The NTP will be making a final recommendation in 2001 for these nine substances for listing in, or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Tenth Report.

Background documents provided to the review committees and the public are available on the web in pdf version at the address above. Hard copies of these documents are also available upon request. The NTP will review the recommendations of each of the review committees and consider the public comments received throughout the process in making decisions regarding the NTP recommendations to the Secretary, DHHS, for listing of the nominated substances in the Tenth Edition of the Report on Carcinogens. The NTP solicits final public comment to supplement any previously submitted comments or to provide comments for the first time on any substance in the following table. Comments will be accepted through June 5, 2000. Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Dated: March 28, 2000.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1[1], RG2[2] AND NTP BOARD SUBCOMMITTEE[3] AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED IN 1999–2000 FOR LISTING INOR DELISTING FROM THE REPORT ON CARCINOGENS[4], 10TH EDITION

Nomination/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Beryllium and Beryllium compounds/7440–41–7.	Used in fiber optics and cellular network communications systems, aerospace, defense and other industry applications.	RG1 unanimously recommended (8/0) listing as known to be a human carcinogen.	RG2 recommended (5 yes votes to 4 no votes) listing as known to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) listing as known to be a human carcinogen.
2,2-bis-(bromomethyl)-1,3-propanediol (Technical Grade) 3296–90–9.	Used as a fire retardant in unsaturated polyester resins, in molded products, and in rigid polyurethane foam.	RG1 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (8/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
2,3-Dibromo-1-Propanol/96–13–9.	Used as a flame retardant, as an intermediate in the preparation of the flame retardant tris(2,3-dibromopropyl) phosphate, and as an intermediate in the manufacture of pesticides and pharmaceutical preparations.	RG1 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
Dyes metabolized to 3,3′-Dimethylbenzidine.	Dyes mainly used for textile industries with other applications in paper, plastics, and rubber industries.	RG1 recommended (5 yes votes to 1 no vote with 1 abstention) to list as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
Dyes metabolized to 3,3′-Dimethoxybenzidine.	Dyes mainly used for textile industries with other applications in paper, plastics, and rubber industries.	RG1 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	RG2 recommended (8 yes votes to 0 no vote with 1 abstention) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
IQ (2-Amino-3-methylimidazo[4,5-f]quinoline)/76180–96–6.	Found in cooked meat and fish and in cigarette smoke.	RG1 unanimously recommended (7/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (8/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0 to list as reasonably anticipated to be a human carcinogen.

SUMMARY OF RG1[1], RG2[2] AND NTP BOARD SUBCOMMITTEE[3] AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED IN 1999–2000 FOR LISTING INOR DELISTING FROM THE REPORT ON CARCINOGENS[4], 10TH EDITION—Continued

Nomination/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Styrene 7,8-oxide/96–09–3	Used mainly in the preparation of fragrances and in some epoxy resin formulations.	RG1 recommended (7 yes votes to 1 no votes) to list as reasonably anticipated to be a human carcinogen.	RG2 recommended (6 yes votes to 3 no votes) to list as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (6 yes votes to 0 no votes with 1 abstention) to list as reasonably anticipated to be a human carcinogen.
Vinyl Bromide/593–60–2	Used primarily in the manufacture of flame retardant synthetic fibers.	RG1 unanimously recommended (10/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (4 yes votes to 3 no votes) listing as known to be a human carcinogen.
Vinyl Fluoride/75–02–5	Used in the production of polyvinylfluoride which is used for plastics.	RG1 recommended (7 yes votes to 2 no votes) to list as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (4 yes votes to 3 no votes) listing as known to be a human carcinogen.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).
*Agencies represented on the NTP Executive Committee include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Center for Toxicological Research (NCTR), National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Department of Health and Human Services (DHHS), National Institutes of Health (NIH), National Cancer Institute (NCI), National Library of Medicine (NLM), and National Institute of Environmental Health Sciences/NTP (NIEHS/NTP).
[3] The NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (the External Peer Review Group).
[4] RoC—Report on Carcinogens.

[FR Doc. 00–8311 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colusa Indian Community Council Liquor Ordinance, Resolution No. 08–02–99–01

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice.

SUMMARY: This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983). I certify that by Resolution No. 08–02-99–01, the Colusa Indian Community Council Liquor Ordinance, was duly adopted by the Colusa Indian Community Council on August 5, 1999. The Ordinance regulates the control of, the possession of, and the sale of liquor on Colusa Indian Community Council trust lands, and is in conformity with the State of California.

DATES: This Ordinance is effective as of April 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street NW, MS 4631-MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Colusa Indian Community Council Liquor Ordinance, Resolution No. 08–02–99–01, is to read as follows:

Colusa Indian Community Council Liquor Ordinance, Resolution No. 08–02–99–01

Article I—Declaration of Public Policy and Purpose

Section 1. The introduction, possession, and sale of liquor on the lands of the Colusa Indian Community (Community) of the Colusa Indian Reservation is a matter of special concern to the Colusa Indian Community Council (Community Council).

Section 2. Federal law (18 U.S.C. §§ 1154, 1161) currently prohibits the introduction of liquor into Indian Country except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), and expressly delegates to each tribe the decision regarding when and to what extent the introduction, possession and sale of liquor shall be permitted.

Section 3. It is in the best interests of the Community, acting pursuant to Article V, Section 1(f) of the Constitution of the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, to enact a tribal ordinance governing the introduction, possession and sale of liquor on the Colusa Indian Reservation, and which also provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the reservation. Further, the Community has determined that said purchase, distribution and sale shall take place only at tribally-owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the Community as a whole.

Section 4. The Community Council further finds that violations of this Ordinance would damage the Community in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the Community will impose a tax on the sale of liquor on the reservation.

Based upon the foregoing findings and determinations, the Community Council hereby ordains as follows.

Article II—Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 1 *Alcohol.* Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including dilutions and mixtures of this substance.

Section 2. *Alcoholic Beverage.* Has the same meaning as the term ''liquor'' as defined in Article II, subsection f of this Ordinance.

Section 3. *Bar.* Means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 4. *Beer.* Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 4 percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than 4 percent of alcohol by weight shall be referred to as ''strong beer.''

Section 5. *Community Council.* Means the Colusa Indian Community Council as defined in the Constitution of the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community.

Section 6. *Liquor.* Means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than 1 percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 7. *Liquor Store.* Means any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 8. *Malt Liquor.* Means beer, strong beer, ale, stout, and porter.

Section 9. *Package.* Means any container or receptacle used for holding liquor.

Section 10. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 11. *Sale and Sell.* Means any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

Section 12. *Spirits.* Means any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 13. *Tribal Land.* Means any land within the exterior boundaries of the Colusa Indian Reservation that is held in trust by the United States for the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community.

Section 14. *Tribal Gaming Commission.* Means the gaming regulatory body established under the Gaming Ordinance of the Colusa Indian Community that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 15. *Wine.* Means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, applies, etc.), or fruit juice and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Article III—Powers of Enforcement

Section 1. The Tribal Gaming Commission, in furtherance of this Ordinance, shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Community Council governing the sale, manufacture, and distribution of alcoholic beverages in public places on the Colusa Indian Reservation;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Gaming Commission to perform its functions. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale, manufacture and/or distribution of liquor in public places on the Colusa Indian Reservation;

(d) To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) To determine and seek damages for violation of this Ordinance;

(g) To make such reports as may be required by the Community Council;

(h) To collect sales taxes and fees levied or set by the Community Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts; and

(i) To exercise such other powers as may be delegated from time to time by the Community Council.

Section 2. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the sovereign immunity of the Colusa Indian Community from suit without the express consent of the Community Council.

Section 3. *Inspection Rights.* The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

Article IV—Sale of Liquor

Section 1. *Licenses Required.* No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the Colusa Indian Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the reservation.

Section 2. *Sales for Cash.* All liquor sales within the reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks or debit cards or credit cards issued by any financial institution.

Section 3. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption by the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one. Resale of any alcoholic beverage purchased within the exterior boundaries of the reservation is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the

reservation and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages of up to $500, as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Article V.—Licensing

Section 1. *Procedure.* In order to control the proliferation of establishments on the reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Colusa Indian Reservation must apply to the Tribal Gaming Commission for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the reservation for which no money is requested or paid.

Section 2. *State Licensing.* No person shall be allowed or permitted to sell or provide liquor on the Colusa Indian Reservation if he/she does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

Section 3. *Application.* Any person applying for a license to sell or provide liquor on the Colusa Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Gaming Commission and pay such application fee as may be set from time-to-time by the Tribal Gaming Commission for this purpose. An incomplete application will not be considered.

Section 4. *Issuance of License.* The Tribal Gaming Commission may issue a license if it believes that the issuance of such a license would be in the best interest of the Colusa Indian Community, the residents of the Colusa Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Gaming Commission.

Section 5. *Period of License.* Each license may be issued for a period of not to exceed 2 years from the date of issuance.

Section 6. *Renewal of License.* A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the Tribal Gaming Commission may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Colusa Indian Community.

Section 7. *Revocation of License.* The Tribal Gaming Commission may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 8. *Transferability of Licenses.* Licenses issued by the Tribal Gaming Commission shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI—Taxes

Section 1. *Sales Tax.* There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the reservation in the amount of 1 percent of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the reservation and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. *Payment of Taxes to the Tribe.* All taxes from the sale of alcoholic beverages on the Colusa Indian Reservation shall be paid over to the General Treasury of the Colusa Indian Community and be subject to the distribution by the Community Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Gaming Commission and administration of this Ordinance.

Section 3. *Taxes Due.* All taxes upon the sale of alcoholic beverages on the reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at 18 percent per annum.

Section 4. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 5. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the reservation. Said review or audit may be done periodically by the Tribal Gaming Commission through its agents or employees whenever in the discretion of the Tribal Gaming Commission such a review or audit is necessary to verify the accuracy of reports.

Article VII—Rules, Regulations and Enforcement

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor, or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Gaming Commission. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Colusa Indian Community for their personal or other non-commercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Colusa Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the Colusa Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 5. No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Ordinance shall be liable to pay the Colusa Indian Community up to five hundred dollars ($500) per violation as civil damages to defray the tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the Tribal Gaming Commission based upon a preponderance of the evidence available to the Tribal Gaming Commission after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

Section 8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of 27, the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

(2) United States Active Duty Military;

(3) Passport; and

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

Article VIII—Abatement

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Chairman of the Community Council or, if he/she fails or refuses to do so, a majority of the Community Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Community to abate and perpetually enjoin any nuisance declared under this Ordinance. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than twenty five thousand dollars ($25,000), payable to the Community and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provision of this title of any other applicable tribal law, and that he/she will pay all fines, costs and damages assessed against him/her for any violation of this title or other tribal liquor laws. If any conditions of the bond be violated, the whole amount may be recovered for the use of the Community.

Section 3. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX—Profits

Section 1. The gross proceeds collected by the Tribal Gaming Commission from all licensing of the sale of alcoholic beverages on the Colusa Indian Reservation, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Colusa Indian Community and expended by the Colusa Indian Community for governmental services and programs on the Colusa Indian Reservation.

Article X—Severability and Effective Date

Section 1. If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Colusa Indian Community that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. § 1154, but only to the extent required by the laws of the United States.

Article XI—Amendment

This Ordinance may only be amended by a two-thirds majority vote of members of the Colusa Indian Community Council attending a duly-noticed meeting at which a quorum is present.

Article XII—Certification and Effective Date

This Ordinance was passed at a duly held, noticed, and convened meeting of the Colusa Indian Community Council Tribal Council by a vote of 15 for, 3 against and 2 abstaining which vote constitutes a quorum held on the 5th day of August 1999, as attested to and certified by Lavern Thomas Pina, Secretary-Treasurer of the Colusa Indian Community Council and shall be effective upon approval by the Secretary of the Interior or his designee as provided by federal law.

Dated: March 29, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–8347 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–02 24 1A]

OMB Approval Number 1004–0176; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the Provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3510 *et seq*. On October 19, 1999, BLM published a notice in the **Federal Register** at 64 FR 56360 requesting comments on this collection. The comment period ended on December 20, 1999. One comment was received in response to that notice. The comment contained information supporting an increase in BLM's burden estimate for certain notices and plans required by the information collection. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0176), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a

copy of your comments to the BLM Information Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden associated with collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, and other forms of information technology.

Title: Surface Management Activities Under the General Mining Law, Regulations at 43 CFR 3802 and 3809.

OMB Approval Number: 1004–0176.

Abstract: BLM requests an extension of OMB approval to collect certain information from mining claimants and operators who want to prospect, explore, mine and reclaim lands subject to the General Mining Law. This information is contained in the surface management regulations at 43 CFR 3802 and 3809 and three bond forms, Surface Management Surety Bond Form (BLM 3809–1), Surface Management Personal Bond Form (BLM 3809–2), and Generalized Bond Rider Form (BLM 3809–4).

The information requested is associated with filing notices of intent to conduct mining operations, where 5 acres or less of land will be disturbed in any calendar year, and plans of operation, in which exploration and mining activities will disturb more than 5 acres of land in any given year. Information associated with notices includes names and mailing addresses of operators and owners; the serial numbers of all mining claims, mill sites, and tunnel sites; maps showing the location of surface disturbances; and a description of the proposed operation, showing how the operator would conduct the activities. Generally, the greater the surface disturbance, the more detail is required. A full-blown plan of operations would contain descriptions of all proposed and existing access routes, aircraft landing areas, and other means of access; of how the operator will prevent unnecessary and undue degradation of the land; of how the operator will reclaim the areas disturbed by mining activities; and of measures to be taken to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts.

BLM has re-examined its hour burden estimates in response to the public comment received on this collection and in response to six comments on a related information collection for the proposed surface management regulations at 43 CFR 3809 (64 FR 6422, February 9, 1999) and changed the burden estimates accordingly.

Bureau Form Numbers: Surface Management Surety Bond Form (BLM Form 3809–1) Surface Management Personal Bond Form (BLM Form 3809–2), and Surface Management Generalized Bond Rider Form (BLM Form 3809–4).

Frequency: On occasion, as applied for or reported.

Description of Respondents: Respondents are claimants and operators who want to prospect, explore, mine or reclaim locatable mineral on public lands.

Estimated Completion Times:

(1) Notices of intent—600 per year, as follows: 390 at 24 hours each for exploration activities; 120 at 40 hours each for placer operations; 90 at 40 hours each for all others;

Total annual burden—17,700 hours.

(2) Plans of operation—150 per year, as follows: 52 for exploration activities 24 hours each for exploration activities; 49 for placer/strip mining at 80 hours each; and 49 for open pit mining at 240 hours each.

Total annual burden—53,100 hours.

(3) Compliance with the National Environmental Policy Act (NEPA) Plans of operations—EA's for 52 mines conducting exploration activities at 320 hours each; EA's for 93 mines conducting mining activities at 64 hours each; EIS's for 5 mines conducting mining activities at 2480 hours each.

Total annual burden—88,560 hours.

(4) Complying with Requirements of the National Historic Preservation Act Plans of operations—150 plans at 30 hours each per cultural survey.

Total annual burden—450 hours.

(5) Forms: 8 minutes per form for all forms.

Total annual burden—22 hours.

Annual responses: 750 (1 per respondent per year).

Annual burden hours: 125,808 hours.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: March 28, 2000.

Carole Smith,

BLM Clearance Officer.

[FR Doc. 00–8303 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–5440–00–C023]

Notice of Availability of Records of Decisions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of svailability of North Fork Coal Records of Decisions (ROD's) for the Iron Point Coal Exploration License application (COC61945), Iron Point Coal Lease Tract application (COC61209) and the Elk Creek Coal Lease Tract application (COC61357) of Federal coal reserves in Delta and Gunnison Counties, Colorado.

RESPONSIBLE OFFICIAL: Mike Pool, Associate State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield, Denver, CO 80215.

SUMMARY: The BLM has issued Records of Decisions (RODs) to offer for competitive sale Federal coal reserves in the Iron Point Coal Lease Tract (COC61209) and the Elk Creek Coal Lease Tract (COC61357). BLM has also issued a ROD to grant the Iron Point Coal Exploration License (COC61945) to Bowie Resources Limited.

DATES: The decisions are subject to appeal for 30 days under the provisions of 43 CFR part 4.

ADDRESSES: Please address questions on the ROD's to the Bureau of Land Management, Attn: Jerry Jones, 2465 South Townsend Ave., Montrose, CO, 81401.

FOR FURTHER INFORMATION CONTACT: Jerry Jones at the above address, or phone number 970–240–5338, or fax number 970–240–5368. E-mail can be sent to Jerry__Jones@co.blm.gov.

SUPPLEMENTARY INFORMATION: As a result of two applications for coal leasing and one application for a coal exploration license, the North Fork Coal Environmental Impact Statement (EIS) was prepared. The BLM and the U.S.D.A. Forest Service were joint lead agencies in the preparation of the document. The U.S.D.I. Office of Surface Mining was a cooperating agency. The Final EIS was made available to the public with the publication of the EPA Notice of Availability on February 25, 2000.

The BLM has decided to offer for competitive sale the Federal coal reserves in two coal lease tracts, the Iron Point Coal Lease Tract (COC61209) and the Elk Creek Coal Lease Tract (COC61357). The decisions generally implement Alternative D, No Subsidence in Sensitive Areas, in the North Fork Coal Final EIS. The described actions plus additional mitigation measures would prevent subsidence under perennial streams and the Curecanti-Rifle 230/345 kv power line and protect important other resources.

The BLM has also decided to grant the Iron Point Coal Exploration License (COC61945) to Bowie Resources Limited. The decision generally implements Alternative B, Proposed Action, in the North Fork Coal Final EIS. The described actions plus additional mitigation measures would protect important other resources.

The decisions are in accordance with the Mineral Leasing Act of 1920 as amended, the Federal Coal Leasing Amendments Act of 1975 and 43 CFR 3400. The decisions are subject to appeal for 30 days under the provisions of 43 CFR part 4.

Dated: March 30, 2000.

Jerry Jones,

EIS Project Manager, Bureau of Land Management.

[FR Doc. 00–8307 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935; COC–23841]

Public Land Order No. 7442; Extension of Public Land Order No. 5718; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 5718, which withdrew approximately 1,365 acres of National Forest System land from mining, for an additional 20-year period. This extension is necessary to continue the protection of the Eisenhower/Johnson Memorial Tunnel on Interstate Highway 70. The land has been and remains open to Forest management and to mineral leasing.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(1994), it is ordered as follows:

1. Public Land Order No. 5718, which withdrew 1,365 acres, more or less, of land in the White River National Forest from location and entry under the United States mining laws for the protection of the Eisenhower/Johnson Memorial Tunnel on Interstate Highway 70, is hereby extended for an additional 20-year period.

2. This withdrawal will expire 20 years from the effective date of this order, unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–8289 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park and Preserve, Alaska; Proposed Mining Plan of Operations

AGENCY: National Park Service, Interior.

ACTION: Availability of proposed mining plan of operations.

SUMMARY: The National Park Service (NPS) announces the availability of a proposed mining plan of operations. Pursuant to the provisions of Section 2 of the Mining in the Parks Act of September 28, 1976, 16 U.S.C. 1901 *et seq.,* and in accordance with the provisions of Section 9.17 of Title 36 Code of Federal Regulations Part 9, Subpart A, Kirk Stanley has filed a proposed mining plan of operations on patented lode mining claims known as the Nabesna Mine, USMS 1591 within Wrangell-St. Elias National Preserve.

DATES: Indefinite.

ADDRESSES: The proposed mining plan of operations is available for inspection during normal business hours at the following two locations: (1) Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892; and (2) Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573.

FOR FURTHER INFORMATION CONTACT: Danny Rosenkrans, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573, (907) 822–7228.

Dated: March 28, 2000.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 00–8301 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Kawaihae, Kohala, Island of Hawaii, HI in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI which meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

The five cultural items include two wooden images, a feather cape fragment, a wooden funnel, and a bracelet. In 1905, these five cultural items were removed from a lava tube complex in Kawaihae, Kohala, HI by William Wagner and Friedrich A. Haenisch, who transferred these cultural items to the Bishop Museum in 1907.

The 13 cultural items are samples of bark cloth. In 1919, these 13 cultural items from a lava tube complex in Kawaihae, Kohala, HI and donated by David Forbes, William Wagner, and Friedrich A. Haenisch were found in Bishop Museum collections. These cultural items were most likely collected during the 1905 expedition to the Kawaihae site.

The six cultural items are six pieces of bark cloth. In 1921, these six cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Robert Van Deusen.

The one cultural item is a piece of bark cloth. In 1923, this cultural item, from a lava tube complex in Kawaihae, Kohala, HI and collected by Jay M. Kuhns, M.D., was donated to the Bishop Museum by Ditley Due Thaanum.

The one cultural item is a piece of a canoe. In 1934, this cultural item from a lava tube complex in Kawaihae,

Kohala, HI was donated to the Bishop Museum by D. Billam-Walker.

The nine cultural items include wood, bark cloth, and mat samples. In 1935, these nine cultural items from a lava tube complex in Kawaihae, Kohala, HI were removed by J. Everett Brumaghim and donated to the Bishop Museum in 1939.

The 12 cultural items include bark cloth, mat, and cordage samples. In 1939, these 12 cultural items were removed from a lava tube complex in Kawaihae, Kohala, HI by Kenneth P. Emory of the Bishop Museum and Keith K. Jones.

The two cultural items are two sets of bark cloth samples. In 1939, these two cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Julius Rodman.

The one cultural item is a sample of cordage. This cultural item, labeled from a lava tube complex in Kawaihae, Kohala, HI was found in the Bishop Museum's collections in 1939.

The 14 cultural items include a series of mat, cordage, and bark cloth samples. In 1954, these 14 cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Mrs. Annabelle L. Ruddle.

The 73 cultural items are bark cloth samples. In 1960, these 73 cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Mrs. Cy Gillette. At an earlier date, these cultural items had been give to Mrs. Gillette by Keith K. Jones.

The four cultural items include four binders of bark cloth samples. In 1980, these cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by John L. Earle, who had collected them at an earlier date.

The four cultural items include four binders of bark cloth samples and a cordage sample. In 1994, these cultural items from a lava tube complex in Kawaihae, Kohala, HI were found in the Bishop Museum's collections.

The 20 cultural items include samples of cordage, mat, and bark cloth. In 1985, these cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Catherine Summers, who complied these samples from Bishop Museum collections.

Based on the style and type of the unassociated funerary objects, the manner of interments, and recovery locations from a lava tube complex in Kawaihae, Kohala, HI, these individuals have been determined to be Native American.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 168 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, the Office of Hawaiian Affairs, Henry A. Auwae, and Melvin Kalahiki, Sr. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Valerie Free, Unit Manager, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone: (808) 847–8205 before May 5, 2000. Repatriation of these objects to the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: March 22, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–8350 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Kawaihae, Kohala, Island of Hawaii, HI in the Possession of Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Kawaihae, Kohala, Island of Hawaii, HI in the possession of Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by professional staff in consultation with representatives of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

In 1905, human remains representing a minimum of four individuals were removed from a lava tube complex by David Forbes, William Wagner, and Friedrich A. Haenisch. In 1907, these human remains, incorporated into two wooden bowls, one wooden image, and one wig, were donated to the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

Based on 43 CFR 10.2(d)(2–4), officials of the Bishop Museum have determined that these cultural items listed above are not unassociated funerary objects, sacred objects, or objects of cultural patrimony, however, the human remains incorporated into these cultural items do meet the definition of ''human remains'' in 43 CFR 10.2(d)(1). Based on historical and anthropological evidence, officials of the Bishop Museum have determined that these human remains were not freely given or naturally shed from the individuals from whose bodies they were obtained. Based on historical and anthropological evidence, officials of the Bishop Museum have determined these human remains are most likely those of Native Hawaiians.

In 1935, human remains representing five individuals were removed from a lava tube complex in Kawaihae, Kohala, HI by J. Everett Brumagh. In 1939, these human remains were donated to the Bishop Museum by Mr. Brumagh. No known individuals were identified. The one associated funerary object is part of a coffin.

In 1939, human remains representing nine individuals were removed from a lava tube complex in Kawaihae, Kohala, HI by Kenneth P. Emory, Bishop Museum Ethnologist, and Keith K. Jones. No known individuals were identified. No associated funerary objects can be identified.

Based on the style and type of the associated funerary object and unassociated funerary objects from this lava tube complex, manner of interments, and recovery locations, these individuals have been determined to be Native American. In consultation with the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i

Nei, and the Office of Hawaiian Affairs, the Bishop Museum decided that no attempt would be made to determine the age of the human remains. Due to the lack of identifiable individuals, the Bishop Museum has been unable to make any lineal descent determinations. Bishop Museum officials believe the claims of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs address and encompass individual, family, and community interests.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of a minimum of 18 individuals of Native American ancestry. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary object and the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, the Office of Hawaiian Affairs, Henry A. Auwae, and Melvin Kalahiki, Sr. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Valerie Free, Unit Manager, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone: (808) 847–8205, before May 5, 2000. Repatriation of the human remains and associated funerary object to the Hawaii Island Burial Council, Hui Malama I Na Kupna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: March 22, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–8351 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining and Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR part 785, Requirements for permits for special categories of mining.

DATES: Comments on the proposed information collection must be received by June 5, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will submit to OMB for extension. This collection is contained in 30 CFR part 785, Requirements for permits for special categories of mining.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels of adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Requirements for permits for special categories of mining, 30 CFR 785.

OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Pub. L. 95–87, which requires applicants for special type of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coal mine permits.

Total Annual Responses: 353.

Total Annual Burden Hours: 16,372.

Dated: March 30, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–8306 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1999 annual report.

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–205–3264), Country and Regional Analysis Division, Office

of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background

Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit annual reports to the Congress regarding the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Section 206(b) of the Act requires that each report include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on domestic industries affected by the Act; and

(3) the estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

In addition, in this year's report the Commission plans to examine the effectiveness of ATPA in promoting export-oriented growth and diversification of production in the beneficiary countries.

Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of March 10, 1994 (59 FR 11308). The Commission's seventh annual report on ATPA, covering calendar year 1999, is to be submitted by October 2, 2000.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the preparation of the seventh annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 23, 2000. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: March 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8369 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367–370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

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)) (the Act), that revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on March 1, 1999 (64 FR 10014) and determined on June 3, 1999 that it would conduct full reviews (64 FR 31609, June 11, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 19, 1999 (64 FR 38690).[2] The hearing was held in Washington, DC, on February 17, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission will transmit its determinations in these reviews to the Secretary of Commerce on April 13, 2000. The views of the Commission are contained in USITC Publication 3291 (April 2000), entitled Color Picture Tubes from Canada, Japan, Korea, and Singapore: Investigations Nos. 731–TA–367–370 (Review).

Issued: March 30, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8370 Filed 4–4–00; 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)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review)]

Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders and suspended investigations on gray portland cement from Japan, Mexico, and Venezuela.

SUMMARY: The Commission hereby gives notice of the scheduling of full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders and termination of the suspended investigations on gray portland cement and cement clinker from Japan, Mexico, and Venezuela would be likely to lead to continuation or recurrence of material injury. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part

[2] Pursuant to a request by parties in support of continuation of the orders, the Commission revised and extended its schedule for these reviews on November 30, 1999 (64 FR 68116, December 6, 1999).

[1] The investigation numbers are as follows: Japan is 731–TA–461 (Review); Mexico is 731–TA–451 (Review); and Venezuela is 303–TA–21 (Review) and 731–TA–519 (Review).

201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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*).

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 62689, November 17, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorize applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on July 26, 2000 and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on August 15, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 7, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 10, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 4, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 24, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before August 24, 2000. On September 18, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 20, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 29, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8355 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–267 and 268 (Review) and 731–TA–297–299, 304 and 305 (Review)]

Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission also determines that the revocation of the countervailing duty orders and the revocation of the antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on February 1, 1999 (64 FR 4896) and determined on May 6, 1999, that it would conduct full reviews (64 FR 27295, May 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 16, 1999 (64 FR 38471). The hearing was held in Washington, DC, on January 27, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on March 30, 2000. The views of the Commission are contained in USITC Publication 3286 (March 2000), entitled Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan: Investigations Nos. 701-TA–267 and 268 (Review) and 731-TA–297–299, 304 and 305 (Review).

Issued: March 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8368 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Thelma J. Askey dissenting.

[3] Chairman Lynn M. Bragg and Commissioners Thelma J. Askey and Deanna Tanner Okun dissenting.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-032]

NASA Advisory Council (NAC), Technology Subcommittee of the Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology Subcommittee of the Earth Systems Science and Applications Advisory Committee.

DATES: Tuesday, May 2, 2000, 9:00 a.m. to 5:30 p.m. and Wednesday May 3, 2000, 9:00 a.m. to 5:30 p.m.

ADDRESSES: Jet Propulsion Laboratory: 4800 Oak Grove Drive, Building 264, room 654, Pasadena, CA 91109–8099.

FOR FURTHER INFORMATION CONTACT: Mr. Granville Paules, Code YF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0706.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome by a Senior JPL Manager

—Introductions, Comments, Adoption of the Agenda

—General status of the overall ESE Technology Programs

—Critique of Candidate Technology Roadmaps for Post EOS First Series Missions and for those potentially requiring space flight validation.

—Round Table discussion of recent ESE Vision Workshop Findings and Recommendations by TSC Attendees at the Workshops

—Review of the ESE Technology Development/Investment Plan for FY2000

—Discussion of external partnering opportunities (continued from earlier meetings)

—(Second Day-Tours of JPL Advanced Technology Development Facilities)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–8349 Filed 4–4–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–031]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 56, Notice Number 00–027, March 22, 2000.

PREVIOUSLY ANNOUNCED DATE AND ADDRESS OF MEETING: Wednesday, April 5, 2000, 12:00 p.m.–1:00 p.m. Eastern Standard Time; NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

CHANGES IN THE MEETING: Date changes to April 17, 2000; Time changed to 4:00 p.m.–5:00 p.m. Eastern Standard Time

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the readiness of the Shuttle (STS–101) Mission (International Space Station assembly flight 2A.2A)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–8348 Filed 4–4–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invite to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before May 5, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Jonathan Womer, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Scott Birckhead at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 29, 1999 (64 FR 73075). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Personnel Records Center (NPRC) Survey of Customer Satisfaction

OMB number: 3095–00XX

Agency form number: N/A

Type of review: Regular.

Affected public: Veterans, government agencies, and other individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: Year One: 3,120. Subsequent years: 12,480.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: Year One: 520 hours. Subsequent years: 2,080 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction is to (1) provide baseline data concerning customer satisfaction MPR's reference service process, (2) identify areas within the reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: March 30, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 00–8352 Filed 4–4–00; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 140, ''Financial Protection Requirements and Indemnity Agreements.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

5. *Who will be required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR Part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70.

6. *An estimate of the number of responses:* Approximately one each for 178 licensees.

7. *The estimated number of annual respondents:* 178.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 821.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 140 of the NRC's regulations specifies information required to be submitted by licensees to enable the NRC to assess (a) The financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 5, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of March 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Office, Office of the Chief Information Officer.

[FR Doc. 00–8334 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 62—''Criteria and Procedures for Emergency Access to non-Federal and Regional Low-level Waste Disposal Facilities.''

3. *The form number, if applicable:* N/A.

4. *How often the collection is required:* Requests are made only when access to a non-Federal low-level waste disposal facility is denied, which results in a threat to public health and safety and/or common defense and security.

5. *Who is required or asked to report:* Generators of low-level waste who are denied access to a non-Federal low-level waste facility.

6. *An estimate of the number of responses:* It is estimated that up to one response would be received every three years.

7. *The estimated number of annual respondents:* No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* It is estimated that 680 hours would be required to prepare the request, or approximately 227 hours per year.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Part 62 sets out the information which will have to be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by May 5, 2000: Erik Godwin, Office of Information and Regulatory Affairs (3150–0143), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of March , 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8337 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station); Exemption

I

Entergy Nuclear Generation Company (Entergy or the licensee) is the owner of the Pilgrim Nuclear Power Station (Pilgrim), and is authorized to possess, use, and operate the facility as reflected in Facility Operating License No. DPR–35. Pilgrim is a boiling-water reactor located at the licensee's site in Plymouth County, on the southeast coast of the State of Massachusetts. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

II

Section IV.F.2.c of Appendix E to 10 CFR Part 50 requires each licensee at each site to conduct an exercise of offsite emergency plans biennially with full participation by each offsite authority having a role under the plan. During such biennial full-participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee conducted a biennial full-participation exercise and 6-year ingestion exercise in December 1999. By letter dated July 30, 1999, as supplemented on September 23, 1999, the licensee requested an exemption from Sections IV.F.2.c of Appendix E regarding the conduct of a full-participation exercise in 2001. The requested exemption is to conduct the next biennial full-participation exercise that should occur in 2001, a few months later, tentatively in May 2002. Future full-participation exercises will be scheduled biennially from the year 2002. The NRC has provided flexibility in scheduling these exercises by allowing licensees to schedule full-participation exercises at any time during the biennial calendar year. This provides a 12- to 36-month window to schedule full-participation exercises while still meeting the biennial requirement specified in the regulations. Conducting the Pilgrim full-participation exercise in calendar year 2002 places the exercise past the previously scheduled biennial exercise that had been scheduled for calendar year 2001. However, the interval

between biennial exercises would be 29 months, which is within the parameters of the existing general policy and practice.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

III

The staff has completed its evaluation of Entergy's request for an exemption and the measures that will be taken to maintain the level of emergency preparedness at Pilgrim between December 1999 and May 2002. By letter dated September 23, 1999, the licensee provided supplemental information in support of the exemption request. The existing training and drill schedule currently in place for emergency response activities will remain in place to ensure the readiness of both onsite and offsite emergency response personnel. For onsite emergency responders, this includes annual classroom training and participation in drills. The licensee will conduct quarterly combined functional and/or activation drills and a self-evaluated annual exercise. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR Part 50, Appendix E, IV.F.2.b. Offsite agencies in Massachusetts are routinely invited to, and actively participate in, these drills and exercises as a training activity for offsite responders personnel. Local response groups are offered annual training and participation in emergency operations center drills. Representatives of the licensee meet monthly with State and local emergency management and support groups. The rescheduling of the biennial exercise has been discussed in these meetings and greeted with support by both State and local representatives. Rescheduling the exercise to 1 year later allows more freedom in the scheduling of exercises by scheduling the exercise to the years in which the licensee does not have scheduled refueling outages. The staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

Only temporary relief from the regulation is provided by the requested exemption since an exercise will be conducted at a future date. The licensee has made a good faith effort to comply with the regulation. The exemption is being sought by the licensee in voluntary response to a request by the NRC to accommodate an adjustment in exercise scheduling that affects multiple agencies. The revised exercise schedule allows for better balance in the utilization of Federal resources, and added flexibility to the scheduling of exercises for the licensee and State and local agencies. The exercise will be conducted in a timeframe that is within generally accepted policy. The staff, having considered the schedule and resource issues within FEMA and the NRC, and the proposed licensee compensatory measures, believes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

IV

The Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are applicable in that application of the regulation is not necessary to achieve the underlying purpose of the rule, and the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the exemption from Section IV.F.2.c of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 16972).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8336 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–460–OL; ASLBP No. 82–479–06–OL]

Atomic Safety and Licensing Board; Washington Public Power Supply System (Nuclear Project No. 1), Memorandum and Order; (Order to Show Cause)

MARCH 30, 2000. Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. David R. Schink.

The Atomic Safety and Licensing Board hereby directs the parties to this proceeding to show cause as to why this litigation should not be dismissed for want of prosecution.

The locus of this case is a challenge by intervenor Coalition for Safe Power (CSP) to the operating license application of Washington Public Power Supply System (WPPSS) (now doing business as Energy Northwest) for its Nuclear Project No. 1. CSP, along with the State of Washington (State) as a 10 C.F.R. § 2.715(c) interested governmental entity, were admitted as parties to this proceeding in 1983. *See Washington Public Power Supply System* (WPPSS Nuclear Project No. 1), LBP–83–66, 18 NRC 780, 780–81 (1983). Since then, however, this proceeding has been in hiatus as a result of WPPSS declarations that it first wished to suspend facility construction and consideration of its operating license request and, thereafter, that it was canceling the project, albeit without withdrawing its operating license application.

After a number of years of filing quarterly reports indicating there had been no change in the status of its application, on January 4, 2000, WPPSS submitted a request to withdraw its operating license application and terminate this adjudicatory proceeding. The Board twice sought, and did not receive, CSP and State comments on the WPPSS withdrawal motion. Before the Board could act on the WPPSS request, however, the applicant filed a February 29, 2000 pleading asking that the Board defer action on its application withdrawal motion. In a March 7, 2000 order providing a schedule for party comments on this WPPSS deferral request, noting the lack of CSP and State

responses to its other issuances, the Board asked that on or before March 22, 2000, those participants each provide the Board with some indication it wished to continue to participate in this operating license adjudication.

The allotted time having passed without a response from CSP or the State, it appears to the Board that neither has an interest in further pursuing this litigation. As a consequence, the Board hereby gives notice that, absent some response from these parties within *thirty days* of the date of publication of this issuance in the **Federal Register** that demonstrates a continued interest in this cause, the Board will terminate the proceeding. [1] Applicant WPPSS and the NRC staff likewise are permitted to file a response to this issuance within that time frame if either wishes to do so.

It is so *Ordered.*

For the Atomic Safety and Licensing Board [2]

This memorandum and order is issued pursuant to the authority of the Chairman of the Atomic Safety and Licensing Board designated for this proceeding.

Rockville, Maryland.

Dated: March 30, 2000.

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 00–8338 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on April 27, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 27, 2000—1 p.m. until the conclusion of business.

The Subcommittees will review a draft Commission paper concerning options for potential revisions to the pressurized thermal shock rule acceptance criterion. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 30, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–8339 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Plant Operations and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Plant Operations and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on April 28, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 28, 2000—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss NRC staff and industry initiatives related to risk-informed technical specifications. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the

[1] As it has done in its January 11, February 16, and March 7, 2000 issuances, the Board requests that each participant who has the capability to do so send a copy of its response by facsimile transmission or internet e-mail to the two Board members, the Office of the Secretary, counsel for WPPSS, and counsel for the any other party who has provided a facsimile number and/or e-mail address.

[2] In addition to service by regular mail to all parties on the service list, copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for applicant WPPSS, a State representative previously identified by WPPSS, and the staff.

above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 29, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–8340 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of April 3, 10, 17, 24, May 1 and 8, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered

Week of April 3

Thursday, April 6

8:30 a.m. Briefing by the Executive Branch (Closed—Ex. 1).

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m. Briefing on Oconee License Renewal (Public Meeting) (Contact: Dave Lange, 301–415–1730).

Wednesday, May 3

9:25 a.m. Affirmation Session (Public Meeting) (if needed).

9:30 a.m. Briefing on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185).

Week of May 8—Tentative

Monday, May 8

10:00 a.m. Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokaimura and the Implications on the NRC's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076).

Tuesday, May 9

8:55 a.m. Affirmation Session (Public Meeting) (if needed).

9:00 a.m. Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

Additional Information

By a vote of 5–0 on March 30, the Commission determined pursuant to U.S.C. 552b(e) and ¶9.107(a) of the Commission's rules that ''Affirmation of (a) Petition for Leave to Intervene in Proceeding Regarding Commonwealth Edison Request for Exemption at Zion Facility; and, (b) International Uranium (USA) Corporation Commission Affirmation of Presiding Officer Decisions Denying Envirocare's Petitions for Intervention'' be held on March 30, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov

Dated: March 31, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–8429 Filed 4–3–00; 10:53 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 11 through March 24, 2000. The last biweekly notice was published on March 22, 2000 (65 FR 15375).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the

Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules 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 May 5, 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. 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).

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment's request: February 15, 2000.

Description of amendment's request: The proposed amendments would revise the technical specifications to permit use of the Westinghouse core monitoring and support system known as Best Estimate Analyzer for Core Operations Nuclear (BEACON).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Power Distribution Monitoring System (PDMS) performs continuous core power distribution monitoring. It in no way provides any protection or control system functionality. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

Continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This results in more time (*i.e.,* earlier determination of an adverse condition developing) for operator action prior to having any adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Each accident analysis addressed in the Byron and Braidwood Stations' UFSAR will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC approved reloaddesign methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed in accordance with the requirements set forth in 10 CFR 50.59, ''Changes, tests and experiments,'' will ensure that future reloads will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

As stated previously, the implementation of the PDMS system has no influence or impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with PDMS does not result in a change to the design basis of any plant component or system. The evaluation of the effects of the PDMS changes shows that all design standards and applicable safety criteria limits are met. These changes, therefore, do not cause the initiation of any accident nor create any new failure mechanisms. All equipment important to safety will operate as designed. Component integrity is not challenged. The proposed changes do not result in any event previously deemed incredible being made credible. The PDMS changes will not result in more adverse conditions and will not result in any increase in the challenges to safety systems. The cycle specific variables required by the PDMS are calculated using NRC approved methods. The Technical Specifications (TS) will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

The proposed change, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The margin of safety is not affected by the implementation of PDMS. The margin of safety presently provided by current TS remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed changes continue to require operation within the core limits that are based on NRC approved reload design methodologies. The proposed changes continue to ensure that appropriate actions will be taken if limits are violated. These actions remain unchanged. The development of the reload specific limits, including Relaxed Axial Offset Control (RAOC) bands, for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload involves a 10 CFR 50.59, ''Changes, tests and experiments,'' safety review to assure that operation of the units, within the cycle-specific limits, will not involve a reduction in margin of safety.

The proposed changes, therefore, do not impact the operation of the Byron and Braidwood Stations in any manner that involves a 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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 18, 2000.

Description of amendment request: The proposed amendments would remove the anticipatory reactor scram signal for turbine electro-hydraulic control (EHC) low oil pressure trip from the reactor protection system (RPS) trip function.

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:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes remove the ''Turbine Electro-Hydraulic Control (EHC) Control Oil Pressure-Low'' scram function and the associated Limiting Safety System Setting (LSSS). The purpose of the Turbine EHC Control Oil Pressure scram is to anticipate the pressure transient which would be caused by imminent control valve fast closure on loss of control oil pressure. This function does not serve as an initiator for any accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). In addition, this trip function is not credited in any design basis event and is functionally redundant to the Turbine Control Valve Fast Closure RPS trip function during a loss of EHC control oil. The Turbine Control Valve Fast Closure will initiate a scram on a loss of control oil event coincident with turbine control valve closure.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The removal of this function does not represent a change in operating parameters or introduce a new mode of operation. The pressure switches associated with the Turbine Control Valve Fast Closure function provide equivalent protection from a loss of EHC oil. For this reason, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Operation with the proposed changes in place will not change any plant operating parameters, nor any protective system actuation setpoints other than removal of the Turbine EHC Control Oil Pressure-Low scram function. The scram function associated with the Turbine Control Valve Fast Closure provides equivalent protection for events involving turbine control valve fast closure

including the loss of EHC control oil pressure. For this reason, eliminating the EHC Control Oil Pressure-Low scram function, which is redundant to other protective instrumentation, does not reduce 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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 23, 2000.

Description of amendment request: The proposed amendments would change the pressure-temperature (P–T) limits by revising the heatup, cooldown and inservice test limitations for the Reactor Pressure Vessel (RPV) to a maximum of 32 Effective Full Power Years (EFPY).

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:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not modify the reactor coolant pressure boundary, do not make changes in operating pressure, materials or seismic loading. The proposed changes adjust the reference temperature for the limiting beltline material to account for radiation effects and provide the same level of protection as previously evaluated. The proposed changes do not adversely affect the integrity of the Reactor Coolant System (RCS) such that its function in the control of radiological consequences is affected. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated for Dresden Nuclear Power Station. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Use of the revised P–T curves will continue to provide the same level of protection as was previously reviewed and approved.

Further, the proposed changes to the P–T curves do not affect any activities or equipment, and are not assumed in any safety analysis to initiate any accident sequence for Dresden Nuclear Power Station. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes reflect an update of the P–T curves to extend the RPV operating limit to 32 Effective Full Power Years (EFPYs). The revised curves are based on the latest American Society of Mechanical Engineers (ASME) guidance and actual operational data for the units. These proposed changes are acceptable because the ASME guidance maintains the relative margin of safety commensurate with that which existed at the time that the ASME Section XI Appendix G was approved in 1974. Therefore, the proposed 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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 29, 2000.

Description of amendment request: The proposed amendments would revise the pressure-temperature (P–T) limits for heatup, cooldown, critical operation and inservice leak and hydrostatic test limitations for the reactor pressure vessel (RPV). The proposed changes replace the current RPV P–T limit curves with three recalculated curves that are applicable to 32 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. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes to the LaSalle County Station reactor pressure vessel (RPV) pressure-temperature (P–T) limits do not modify the boundary, operating pressure, materials or seismic loading of the rector coolant system. The proposed changes do adjust the P–T limits for radiation effects to ensure that the RPV fracture toughness is consistent with analysis assumptions and NRC regulations. Thus, the proposed changes do not involve a significant increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not adversely affect the integrity of the reactor coolant system such that its function in the control of radiological consequences is affected. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the reactor pressure vessel pressure-temperature limits do not affect the assumed accident performance of any structure, system or component previously evaluated. The proposed changes do not introduce any new modes of system operation or failure mechanisms. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

Appendices G, ''Fracture Toughness Requirements,'' and H, ''Reactor Vessel Material Surveillance Program Requirements,'' of 10 CFR 50 describe specific requirements for fracture toughness and reactor vessel material surveillance that must be considered in establishing P–T limits. Appendix G of 10 CFR 50 specifies fracture toughness and testing requirements for reactor vessel material in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code and that the beltline material in the surveillance capsules be tested in accordance with Appendix H of 10 CFR 50. Appendix G also requires the prediction of the effects of neutron irradiation on the vessel embrittlement. Generic Letter 88–11, ''NRC Position on Radiation Embrittlement of Reactor Vessel Materials And Its Impact on Plant Operations,'' requests that the methods in Regulatory Guide 1.99, Revision 2, ''Effects of Residual Elements on Predicted Radiation Damage to Reactor Vessel Material,'' be used to predict the effect of neutron irradiation on the reactor vessel material.

The current P–T limits for LaSalle County Station were approved by the NRC in Amendment No. 71 for Unit 1 and Amendment No. 55 for Unit 2. The NRC approval of the current pressure-temperature limits was based on their conformance to the requirements of Appendices G and H of 10 CFR 50. The NRC also noted that current P–T limits satisfied Generic Letter 88–11

because the method in Regulatory Guide 1.99, Revision 2 was used to calculate the Adjusted Reference Temperature (ART).

The methodology used to generate the revised P–T limits in the proposed changes is similar to the methodology used to generate the currently approved P–T limits, in conformance with the requirements of Appendices G and H of 10 CFR 50, consistent with the methods of Regulatory Guide 1.99, Revision 2, and consistent with the calculations contained in our July 14, 1999, proposed TS change for power uprate operation. These proposed changes are acceptable because the ASME B&PV Code guidance maintains the relative margin of safety commensurate with that which existed at the time that the ASME B&PV Code Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' Appendix G was approved in 1974. 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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, PO Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Consolidated Edison Company of New York, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of application for amendment: February 14, 2000.

Description of amendment request: The proposed amendment would revise Technical Specifications Sections 2.10.2, 3.1.2, 3.2.1, 4.1.8.1.b, and 4.1.8.1. Specifically, Sections 3.1.2, 3.2.1, and 4.1.8.1.b, are organizational title changes that are administrative in nature and reflect a streamlining of the Consolidated Edison Company of New York, Inc.'s, management structure. Section 4.1.8.1 is changed to reference the current sections of Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR) and to remove any ambiguity that may exist by referring to obsolete sections of the regulations. A footnote was moved from Section 2.11 to Section 2.10.2.6 to improve the clarity of the Technical Specification since it pertains to text in subsection 2.10.2.4.

Basis for proposed no significant hazards 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) Changes to Sections 3.1.2, 3.2.1, and 4.1.8.1.b To Reflect Organizational Title Changes

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change is administrative in nature. The changes involve updating Sections 3.2.1.h and 4.1.8.b to use the title ''Shift Manager'' instead of ''Senior Watch Supervisor'' and updating Section 3.1.2 and 3.1.2.b to use the title ''Plant Manager'' instead of ''General Manager—Nuclear Power Generation'' and movement of the footnote, ''*Licensed Operator for IP2.'' These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

(b) Change to Section 4.1.8.1 to Reference the Current Sections of 10 CFR 20

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change [to Section 4.1.8.1] is administrative in nature. The change involves updating Section 4.1.8.1 to reference 10 CFR 20.1601(a) and 10 CFR 20.1601(b). This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change is administrative in nature. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. 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: Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place–1830, New York, NY 10003.

NRC Section Chief: Michael Masnik.

Consolidated Edison Company of New York, Inc., Docket Nos. 50–003, 50–247 Indian Point Nuclear Generating Station, Units 1 and 2, Buchanan, New York

Date of application for amendment: February 14, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Station, Unit Nos. 1 and 2, Environmental Technical Specifications (ETS) would change Section 5.4.1, eliminating the discussions of Section 4.2. Specifically, in ETS Section 5.4.1, Routine Reports, the proposed change seeks to delete the reference to and discussions about Section 4.2, which was deleted from the Unit 2 Operating License as part of Amendment #90. The change is administrative in nature and improves the clarity of the ETS by eliminating the reference to a section that no longer exists.

Basis for proposed no significant hazards determination: As required by

10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change is administrative in nature. The change involves deleting, in Section 5.4.1, the reference to and the discussions about Section 4.2, which no longer exists. The monitoring requirements specified in the current Environmental Technical Specifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes do 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: Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place-1830, New York, NY 10003.

NRC Section Chief: Michael Masnik.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 22, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 3.7.B.1 and 3.7.B.2 to reference American Society for Testing and Materials (ASTM) D3803–1989 for testing charcoal samples from the standby gas treatment system (SGTS) and the control room high efficiency air filtration systems (CRHEAFS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident analyses performed to ensure compliance with the dose limits of 10 CFR Part 100 and 10 CFR Part 50, Appendix A, GDC 19, use assumptions regarding SGTS and CRHEAFS performance. The analyses assume SGTS train efficiency for radioiodine removal of 99% and CRHEAFS train efficiency of 95%. They also assume individual charcoal bank efficiencies of 95%.

Obtaining charcoal samples from both systems in accordance with Regulatory Position C.6.b of Regulatory Guide (RG) 1.52, Revision 2, March 1978, ensures the laboratory tests a representative sample of the activated charcoal in each system. Testing these samples in accordance with ASTM D3803–1989 at a temperature of 86 °F and 70% RH [relative humidity] ensures accurate and reproducible test results are obtained. Specifying the allowable removal efficiency as ≥97.5% ensures an appropriate safety factor is applied. This safety factor is consistent with GL 99–02. Inlet methyl iodide concentrations are specified by ASTM D3803–1989. Finally, increasing the acceptance criteria for halogenated hydrocarbon tests to 99.9% ensures system performance is consistent with accident analysis assumptions.

No accident initiators are affected by the proposed change. Increasing charcoal adsorber efficiency and reducing allowable bypass leakage ensures SGTS and CRHEAFS performance are consistent with that assumed in Pilgrim's accident analyses. Therefore, the postulated consequences are unchanged from the previously evaluated analyses.

There are no safety consequences and environmental impacts associated with the TS 5.0 pagination revision. The proposed pagination revision incorporates, in orderly fashion, pages approved by Amendments 177 and 179.

(2) The operation of Pilgrim 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.

No new or different types of accidents or malfunctions than those previously analyzed in the Updated Final Safety Analysis Report are introduced by this proposed change because there are no new failure modes being introduced. Rather, the changes being proposed reduce the possibility that existing failure modes could occur. As discussed above in the first part of this No Significant Hazards Consideration, specifying sampling and testing of charcoal adsorber banks to NRC approved standards, increasing charcoal efficiency requirements and reducing allowable bypass leakage does not challenge plant safety and will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no safety consequences and environmental impacts associated with the TS 5.0 pagination revision. The proposed pagination revision incorporates, in orderly fashion, pages approved by Amendments 177 and 179.

(3) The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Collecting charcoal for testing in accordance with RG 1.52 ensures a representative sample is obtained. Testing the sample in accordance with ASTM D3803–1989 at 86 °F and 70% RH ensures accurate and reproducible results are obtained. Increasing the minimum allowable charcoal efficiency from 95% to 97.5% increases the margin of safety. Increasing the minimum allowable halogenated hydrocarbon removal requirement from 99% to 99.9% also increases the margin of safety.

There are no safety consequences and environmental impacts associated with the TS 5.0 pagination revision. The proposed pagination revision incorporates, in orderly fashion, pages approved by Amendments 177 and 179.

Based on the staff's analysis, 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: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: March 8, 2000.

Description of amendment request: The proposed amendment would change the technical specification definition of core alteration from ''* * * the movement or manipulation of any component within the reactor pressure vessel with the vessel head removed and fuel in the vessel* * *'' to ''* * * the movement or manipulation of any fuel, sources, or reactivity control components [excluding coupling/uncoupling of CEAs [control element assemblies]] within the reactor vessel with the vessel head removed and fuel in the vessel.* * *''

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:

Criterion 1 Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The intent of the definition is to ensure that activities which could result in reactivity changes or have the potential to cause fuel damage are considered a core alteration. The current definition could be [interpreted] to apply to other activities that would not result in reactivity changes or have the potential to cause fuel damage. Thus, the modification of the definition clarifies the wording such that movement of only those components that result in reactivity changes or have the potential to cause fuel damage are specified. The modified NUREG–1432 [Standard Technical Specifications, Combustion Engineering Plants] definition was derived to limit those actions that could cause reactivity changes and potentially affect the probability or consequences of fuel handling accidents. Therefore, changing the definition of a core alteration to movement of those components that directly affect reactivity will not result in an increase in the probability or consequences associated with a fuel handling accident.

Therefore, this change 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 definition identifies specific components that if moved or manipulated would result in reactivity changes. The movement or manipulation of items such as lights, video cameras, and reactor vessel material specimen capsules within the reactor vessel will not result in changes in reactivity. Additionally, no reactivity change would result with the withdrawal and insertion of incore detectors or the movement of the reactor vessel upper internals within the reactor vessel with fuel in the vessel.

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 core alteration definition is based on the need for control of reactivity changes and the consequences of fuel handling accidents. The proposed change provides clarity as to what component movement or manipulation results in reactivity changes. The proposed change is in accordance with the guidance provided in NUREG–1432 for a core alteration.

Therefore, this 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: 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 No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Date of amendment request: March 9, 2000.

Description of amendment request: The proposed amendment would revise the license as follows:

For Cycle 14 only, Entergy Operations[, Inc.] shall be permitted to operate the reactor based on a risk-informed demonstration that predicted steam generator tube integrity, with consideration of eggcrate axial flaws, is adequate to meet Regulatory Guide 1.174 numerical acceptance criteria. In accordance with Principle 5 in Regulatory Guide 1.174 concerning monitoring operational experience to ensure that performance is consistent with risk predictions, if Entergy Operations plugs or repairs steam generator tubes during Cycle 14, then the steam generators shall be reinspected to the extent necessary to verify that they have been returned to a condition consistent with the risk assessment.

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:

Criterion 1 Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

A steam generator tube rupture is an accident previously evaluated in the ANO–2 [Arkansas Nuclear One, Unit 2] Safety Analysis Report. The probability of tube burst under design basis accident conditions is only slightly increased by the proposed change due to the minor reduction in margin of safety associated with tubing structural integrity, but is within the current industry guidance of NEI [Nuclear Energy Institute] 97–06, ''Steam Generator Program Guidelines.'' Detailed studies have been performed to evaluate the probable condition of the steam generator tubing for the remainder of cycle 14 operation. These studies show less than a 0.1 percent increase in the probability of tube rupture under worst case design basis accident conditions as a result of the proposed change.

This change does not modify any parameter that will increase radioactivity in the primary system or increase the amount of radioactive steam released from the secondary safety valves or atmospheric dump valves in the event of a tube rupture.

Therefore, this change 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 scope of this change does not establish a potential new accident precursor. The design basis accident analyses for ANO–2 include the consequences of a double-ended break of one steam generator tube which bounds other postulated failure mechanisms. The proposed change does not modify any mode of operation or modify existing periodic inservice inspection requirements.

Therefore, this change does not create the possibility or 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 justifies a minor reduction in the steam generator tubing structural integrity margin of safety of three times normal differential operating pressure (4050 psi). However, the margin of safety for a tube burst still remains well in excess of the 2500 psi maximum differential pressure used in the design basis accident analysis for a main steam line break. The proposed change is technically consistent with the criteria of NEI 97–06 and Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.''

Therefore, this 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: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: November 29, 1999, supplemented December 20, 1999.

Description of amendment request: The proposed amendment would add license condition 2.C(12) to allow a one-time extension of the steam generator inspection interval of Technical Specification 4.4.5.3.a. This would allow the steam generator inspection interval to coincide with the 8th refueling outage scheduled to begin in September 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is temporary and allows a one time extension of the steam generator (SG) surveillance requirement (SR) for Cycle 8 to allow surveillance testing to coincide with the 8th refueling outage (2R8). The proposed surveillance interval extension will not cause a significant reduction in system reliability nor affect the ability of a system to perform its design function. Current monitoring of plant conditions and the surveillance monitoring required during normal plant operation will be performed as usual to assure conformance with technical specification (TS) operability requirements.

The TS SG tube inspection is intended to prevent the ''Steam Generator Tube Failure'' analyzed in [Updated Final Safety Analysis Report] UFSAR Section 15.6.3 by maintenance of the integrity of the primary to secondary coolant boundary represented by SG tubes. The process by which this integrity is maintained is inspection of SG tubes at prescribed intervals, and the repair or removal of defective tubes from service. Inspection intervals are based on preventing corrosion growth from exceeding tube structural limits, thereby preventing tube failure. The 1998 SG inspection characterized existing tube degradation, and degraded tubes were removed from service at that time. Degradation growth rates were evaluated for the next operating interval and it was determined that the steam generator tube structural integrity is maintained. Degradation of SG tubes was prevented during the extended outage by a corrosion prevention program.

The surveillance extension does not involve a change to plant equipment and does not affect the performance of plant equipment used to mitigate an accident. This change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the surveillance interval for the performance of specific inspections will not create the possibility of any new or different kind of accidents. No change is required to any system configurations, plant equipment or analyses.

SG tube inspections determine tube integrity and provide reasonable assurance that a tube rupture or primary to secondary leak will not occur. The only type of accident that can be postulated from extending the SG inspection interval would be a tube leak or rupture and these are analyzed in the UFSAR. No new failure modes are created by the surveillance extension. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance interval is being extended. Extending the surveillance interval for the performance of these specific inspections does not involve a significant reduction in the margin of safety derived from the required surveillances.

The margin of safety depends upon maintenance of specific operating parameters within design limits. In the case of SGs, that margin is maintained through assurance of tube integrity as the primary to secondary boundary. Assurance of tube integrity is provided through periodic in-service inspection of tubes and repair or removal of defective tubes from service. Radiation monitors provide a detection capability of primary to secondary leakage to enable a prompt response. The water chemistry of the steam generators during shutdown was maintained as described previously in Section C [Section C of Attachment B to the licensee's November 29, 1999, amendment request]. Maintenance of the SG water chemistry during power operation in accordance with Electric Power Research Institute (EPRI) guidelines provides additional margin of safety. Therefore, the plant will be maintained within the analyzed limits and the proposed extension will not significantly reduce 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: Mary E. O'Reilly, Attorney, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Marsha Gamberoni.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: January 19, 2000.

Description of amendment request: These proposed license amendments will revise the Technical Specifications to be consistent with the Standard Technical Specifications requirements that allow for an expanded as-found testing acceptance tolerance for the main steam safety valves (MSSV) and pressurizer code safety valves (PSV). Mode 5 operability requirements for the PSVs will also be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident previously evaluated has not been increased. The changes provided in this safety evaluation do not affect the assumptions or results of any accident evaluated in the UFSAR [updated final safety analysis report]. The actual setpoints and as-left setpoint tolerances of the MSSVs and PSVs are not changed as a result of this evaluation.

Likewise, the consequences of any accident previously evaluated have not been increased. The ability of the MSSVs and PSVs to respond to accident conditions as assumed in any accident analysis has not been affected (i.e., adequate overpressure protection is provided). The proposed changes allow for the acceptance of safety valve lift test results based on tolerances that are consistent with accident analysis assumptions.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed activity does not create the possibility of an accident of a different type than any previously evaluated. No physical plant changes are being made and no new failure modes have been introduced by the proposed changes. This evaluation revises the acceptance criteria for MSSV and PSV lift

test results based on tolerances that are consistent with accident analysis assumptions. The actual setpoints and as-left setpoint tolerances of the MSSVs and PSVs are not changed as a result of this evaluation.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for any Technical Specification or in any licensing document has not been reduced. MSSV and PSV setpoint values are not being changed. MSSV and PSV setpoints are still required to be set within a tolerance of plus or minus 1% (the as-left setpoint tolerance). This evaluation allows for the revision of acceptance criteria for MSSV and PSV lift test results such that testing criteria is consistent with accident analysis assumptions. This will allow for the accommodation of setpoint drift without invalidating the accident analyses. The proposed changes are consistent with the Standard Technical Specifications, which require MSSV and PSV setting within a plus or minus 1% tolerance, but allow surveillance testing to accept valves that lift within plus or minus 3%. A review of the plants' accident analyses has identified the plant-specific tolerances that may be used for this surveillance testing.

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: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, et al. (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 16, 2000.

Description of amendment request: These proposed license amendments will revise the Technical Specifications (TS) to delete references to certain motor operated valve thermal overload protection bypass devices for Unit 2 and to revise the TS for accident monitoring instrumentation for both Units 1 and 2. The proposed amendments also make an administrative change to the Unit 2 TS Index.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the new ACTION statements for the Unit 1 accident monitoring instrumentation adds conservatism that does not exist in the current Technical Specifications. These changes are consistent with either FPL's originally proposed license amendment for this instrumentation or consistent with the Technical Specification allowed outage time for the component being monitored (*i.e.,* the auxiliary feedwater pumps). Unit 2 valves MV–21–4A and MV–21–4B were modified to be manually operated valves and no longer perform an accident mitigation function. Unit 2 wide range T_{hot} instrumentation is used to satisfy Regulatory Guide 1.97 accident monitoring requirements.

These Technical Specification changes either correct existing errors or add conservatism to the way the Unit is operated. Based on the above, the physical changes to plant equipment or plant operation would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Accident monitoring instrumentation monitors the process of postulated events, and is not an accident initiator. Unit 2 valves MV–21–4A and MV–21–4B were modified to be manually operated valves and no longer have an active safety function, therefore, these valves are not accident initiators. These Technical Specification changes either correct existing errors or add conservatism to the way the Unit is operated. Based on the above, the physical changes to plant equipment or plant operation would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed amendments do not involve a significant reduction in a margin of safety. FPL determined that these proposed license amendments are necessary to correct existing errors or add conservatism to the way the Unit is operated. As such, the assumptions and conclusions of the accident analyses in the UFSAR [Updated Final Safety Analysis Report] remain valid and the associated safety limits will continue to be met.

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: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420

NRC Section Chief: Richard P. Correia.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 18, 2000.

Description of amendment request: The technical specification (TS) changes are being proposed to provide flexibility of operation. These changes include: (1) The ability to have a standby Safety Injection (SI) pump available during Reactor Coolant System (RCS) reduced inventory conditions with the RCS pressure boundary intact; (2) The ability to respond more rapidly with additional makeup sources than currently established by TSs in the unlikely event of a loss of decay heat removal capability or unexpected reduction in RCS inventory; (3) Realigning a footnote to clarify the allowance of an inoperable SI pump to be energized for testing or filling accumulators; (4) Recognition that a substantial vent area exists for cold overpressure protection when the reactor vessel head is on and the studs are fully detensioned; (5) Limit maneuvering the plant beyond Hot Shutdown when one charging pump is operable; and (6) Establishment of a new value for the open permissive interlock associated with the Residual Heat Removal System suction isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or manner in which structures, systems, and components perform their intended safety 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 do not affect the source term, containment isolation, or radiological

release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Since there are no changes to previous accident analysis, 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. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change to the design basis of any plant structure, system, or component. All equipment important to safety will operate as designed. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. The proposed changes do not cause the initiation of any accident nor create any new failure mechanisms. The changes do not result in any event previously deemed incredible being made credible. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not adversely affect equipment design or operation and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

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: February 18, 2000.

Description of amendment request: Changes to technical specification (TS) Sections 4.0.5 and 4.4.6.2.2.e are being proposed to clarify that the Inservice Testing (IST) program will be performed in accordance with the requirements of surveillance requirement (SR) 4.0.5 and the American Society of Mechanical Engineers (ASME) Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code), instead of Section XI of the ASME Boiler and Pressure Vessel Code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Seabrook Station has proposed to utilize the ASME OM Code-1995 including the 1996 Addenda (OMa Code-1996) for the IST of pumps and valves as an alternative to the requirements of the 1989 Edition of Section XI pursuant to 10 CFR 50.55a(f)(4)(iv) subject to the limitations modifications listed in paragraph (b). The use of the ASME OM Code-1995 including the 1996 Addenda has been evaluated by the NRC (64 FR 51370) and has supplanted Section XI of the 1989 Edition of the ASME Boiler and Pressure Vessel Code as the Code referenced in paragraph (b) for the IST of pumps and valves effective November 22, 1999. The proposed administrative changes only add ASME OM and applicable terms from that Code into the TSs. These proposed changes are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the TSs clarify that the IST program will be performed in accordance with the requirements of SR 4.0.5 and the ASME OM Code and to clarify the surveillance interval requirements for components tested on a Semi-quarterly and Biennial frequency. The proposed changes are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The changes to the TSs do not involve a reduction in the margin of safety. As previously identified the subject changes are administrative in nature and will clarify that the IST program will be performed in accordance with the requirements of SR 4.0.5 and the ASME OM Code. The use of the ASME OM Code-1995 including the 1996 Addenda in lieu of Section XI of the ASME Boiler and Pressure Vessel Code will result in a net improvement in the measures for performing the IST of pumps and valves and has been previously evaluated by the NRC. Therefore, the proposed changes to the TSs will not result in a significant reduction in a margin of safety. 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.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: February 29, 2000:

Description of amendment request: The proposed amendment would approve continued use of two exceptions previously granted by the Nuclear Regulatory Commission (NRC) to the American Society of Mechanical Engineers N510–1989 testing requirements for the emergency filtration train (EFT) system, revise the Technical Specifications (TSs) to reflect modifications to the EFT system that eliminate the need for additional test exceptions, revise the TSs to be consistent with the guidance of NRC Generic Letter 99–02, and revise the TSs to include operability requirements for the EFT system during operations that could result in a fuel handling accident.

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.

During an accident, the Control Room Emergency Filtration [EFT] System provides filtered air to pressurize the Control Room to minimize the activity, and therefore the radiological dose, inside the Control Room. The SBGT [standby gas treatment] System maintains a small negative pressure in the Reactor Building to minimize ground level escape of airborne radioactivity. Technical Specification operability and surveillance requirements are established in order to ensure that the SBGT and EFT Systems will perform their safety functions during an accident. The proposed amendment documents the test method for laboratory testing of charcoal adsorbers in both systems, implements adequate test acceptance criteria, and improves the methodology of in-place testing of charcoal filters in the EFT System. The additional operability requirements for the EFT System ensure that the systems will be available when required. The surveillances adequately show that the system is operable and capable of performing its safety function. Dose to the public and the Control Room operators are not affected by the proposed change.

Since neither system is an accident initiator, the probability of an accident is not increased.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes. The proposed surveillance requirements are consistent with industry and regulatory guidance and show that the system is capable of performing its safety function. The added operability requirements for the EFT System ensure that the system will be available when required.

Therefore, the proposed amendment will 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 the margin of safety.

The proposed amendment is consistent with current industry and regulatory standards for testing filters. The proposed amendment maintains margins of safety. Off-site and Control Room dose assessments are not affected by the proposed amendment, since the ability of the SBGT and EFT Systems to perform their safety function is shown by the proposed surveillance requirements. The proposed change to the surveillances provides assurance that the system will perform at the filter efficiency used in the evaluation of the radiological consequences of the postulated events. Therefore, the proposed amendment will 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 E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 13, 2000.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) for both units to clarify Figure 3.4.10–1, ''Reactor Vessel Pressure vs. Minimum Vessel Temperature.'' The amendment would also revise the Unit 2 TS to correct a reference in TS 5.6.5.b, ''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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed revision to Technical Specification Figure 3.4.10.1 and the proposed revision to the references in the Unit 2 Technical Specification section 5.6.5.b are administrative and/or editorial in nature, and 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.

This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revision to Technical Specification Figure 3.4.10.1 and the proposed revision to the references in the Unit 2 Technical Specification section 5.6.5.b are administrative and/or editorial in nature. The proposed revisions do not change any plant systems, structures, or components, nor do they change any existing accident analysis, or create any new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

This proposal does not involve a significant reduction in the margin of safety. The proposed revision to Technical Specification Figure 3.4.10.1 and the proposed revision to the references in the Unit 2 Technical Specification section 5.6.5.b are administrative and/or editorial in nature, and do not result in [a] significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PP&L, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni, Acting.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: March 8, 2000.

Description of amendment request: The proposed amendment would revise the R. E. Ginna Nuclear Power Plant Improved Technical Specifications associated with the Spent Fuel Pool Storage (SFP) (limiting condition for operation (LCO) 3.7.13), and Design Features Fuel Storage (4.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna [Nuclear Power Plant] in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative change only involves how the maximum initial fuel assembly enrichment is described and has no impact on the probability or consequences of an accident. The remaining change is evaluated below.

The regions of the SFP and specific storage cell types differ from each other in regards to the specific absorber material within the cells. Administrative controls are used to maintain the specified storage patterns and to assure storage of a fuel assembly in a proper location based on initial U–235 enrichment, burnup, and decay time. Procedures which perform this surveillance will include independent verification provisions.

There is no significant increase in the probability of an accident concerning the potential insertion of a fuel assembly in an

incorrect location in the storage racks. Ginna currently uses administrative controls to move fuel assemblies from location to location within the SFP. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Improved Technical Specification spent fuel rack storage configuration limitations. Fuel movement procedures are planned to include independent verification of fuel handling steps.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks. The criticality safety analysis demonstrate that the pool K_{eff} will remain ≤0.95 following an accidental misloading due to the boron concentration of the pool. The existing Improved Technical Specification limitation on soluble boron within the SFP will ensure that an adequate boron concentration is maintained.

Based on the above, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously analyzed.

2. Operation of Ginna [Nuclear Power Plant] in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The administrative change to the Improved Technical Specifications has no impact on plant hardware or operations and therefore cannot create a new or different kind of an accident.

Criticality accidents in the SFP are not new or different types of accidents, they have been analyzed in the Updated Final Safety Analysis Report and in criticality safety analysis reports associated with specific licensing amendments for fuel enrichments up to the nominal 5.0 weight percent U–235 that is assumed for the proposed change.

The current Improved Technical Specifications contain limitations on the minimum SFP boron concentration. The proposed changes to the Improved Technical Specifications to allow credit for soluble boron for a K_{eff} < 0.95 in the SFP is consistent with the results of the new criticality safety analysis. Since soluble boron has always been maintained in the SFP water, and is currently required by Improved Technical Specifications, the implementation of this new requirement will have no effect on normal SFP operations and maintenance. A dilution of the spent fuel pool soluble boron has always been a possibility, however, it has been shown in the SFP boron dilution analysis that there are no credible dilution events for which the spent fuel pool K_{eff} could increase to >0.95. Therefore, the implementation of crediting soluble boron in the SFP will not result in the possibility of a new kind of accident.

The proposed changes to Improved Technical Specifications LCO 3.7.13 continue to specify the requirements for the spent fuel rack storage configurations. Since the proposed SFP storage configuration limitations will be similar to the current ones, the new limitations will not have any significant effect on normal spent fuel pool operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will be performed to ensure that the spent fuel pool loading configuration meets specified requirements.

The misloading of a fuel assembly in the required storage configuration has been evaluated. In all cases, the rack K_{eff} remains ≤0.95.

Under the proposed amendment, no changes are being made to the racks themselves, any other systems, or to the physical structures of the Auxiliary Building itself. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna [Nuclear Power Plant] in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed administrative change to the Improved Technical Specifications has no impact on any acceptance criteria, plant operations or the actual failure of any systems, components or structure; therefore the change has no impact on the margin of safety.

The spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality safety analysis performed in a manner analogous to that of the NRC approved Westinghouse spent fuel rack criticality safety analysis methodology.

While the criticality safety analysis utilized credit for soluble boron, storage configurations have been defined using 95/95 K_{eff} calculations to ensure that the spent fuel rack K_{eff} will be <1.0 with no soluble boron. Soluble boron credit is used to offset uncertainties, tolerances, and off-normal conditions (such as a misplaced assembly) and to provide subcritical margin such that the spent fuel pool K_{eff} is maintained at ≤0.95.

The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to K_{eff} exceeding 0.95 has been evaluated and shown to be not credible. An evaluation has been performed which shows that dilution of the SFP boron concentration from 2300 ppm to 975 ppm is not credible. Also, the spent fuel rack K_{eff} will remain <1.0 (with a 95/95 confidence level) with the SFP flooded with unborated water. These analyses demonstrate a level of safety comparable to the conservative criticality safety analysis methodology required by Westinghouse WCAP–14416. Therefore, these 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: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Marsha Gamberoni, Acting.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: March 15, 2000.

Description of amendment request: The proposed amendment would change to the technical specifications, to provide a completion time of 7 days of continued reactor operation with two CAD subsystems inoperable.

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 safety-related function of the Containment Atmosphere Dilution (CAD) system is to mitigate the effects of a loss-of-coolant-accident (LOCA) by limiting the volumetric concentration of oxygen in the primary containment atmosphere. The CAD System is not an event initiator, therefore, the probability of the occurrence of an accident is not affected by this proposed Technical Specification (TS) change. Emergency procedures preferentially use the normal containment inerting system to provide post-accident vent and purge capability, with the CAD system only serving in a backup role to this system. Hence, in the event of the inoperability of both CAD subsystems, the proposed TS require the normal containment inerting system to be verified available as an alternate oxygen control means.

Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This TS change does not result in any changes to the CAD equipment design or capabilities or to the operation of the plant. Since the change impacts only the required action completion time for periods of CAD subsystem inoperability and does not result in any change in the response of the equipment to an accident, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

As stated in GL 84–09, a Mark I type boiling water reactor (BWR) plant is not considered to rely upon purge/repressurization systems such as CAD as its primary means of hydrogen control when the unit(s) is operated in accordance with certain technical criteria. The BFN units are operated in accordance with these criteria. The BFN Unit 2 and Unit 3 containments are inerted

with nitrogen during normal operation, recycled containment atmosphere is used for pneumatically operated components inside containment, and there are no potential sources of oxygen generation inside containment other than the radiolytic decomposition of water. The system preferred by the EOIs for oxygen control post-accident is the normal primary containment inerting system. Because the probability of an accident involving hydrogen and oxygen production is small, CAD is not the primary system used to mitigate the creation of combustible containment atmosphere mixtures, and because the requested LCO where both CAD subsystems is inoperable is not long, no significant reduction in the margin of safety is associated with this proposed amendment.

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 l0H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard Correia.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 18, 2000.

Description of amendment request: The proposed amendment would revise the technical specifications to identify (1) M5 alloy as a material used in the construction of fuel assemblies, and (2) The associated topical report that describes the fuel.

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 proposed TS revision will allow the use of a new advance alloy material for the fuel rod cladding. The new M5 alloy properties are not significantly different than the characteristics of the currently used zircaloy-4 as demonstrated in the NRC approved Topical Report BAW–10227P–A for the use of the M5 alloy for fuel rod cladding. In this topical, the M5 alloy was shown to perform very similar to the zircaloy-4 with improved performance in several areas including fuel cladding corrosion, hydrogen pickup, fuel rod and fuel assembly growth, and fuel rod cladding creep. The proposed revision will not alter the operating characteristics of the plant or plant components. The fuel rod cladding function will not be changed even though some of the rod cladding properties could be enhanced.

The M5 alloy will maintain fuel rod cladding integrity such that the potential for rod cladding failures is not increased. The fuel rod cladding is not assumed to arbitrarily fail as an accident initiator even though it does function to ensure that initial core conditions are within the analysis assumptions and to provide a barrier to the release of radiation. Therefore, the proposed revision will not increase the possibility of an accident based on the new M5 alloy having similar properties as the zircaloy-4 material.

The ability of the new M5 fuel rod cladding material to provide a barrier against the release of radioactive fuel material has not been reduced with respect to the zircaloy-4 material and the generation of hydrogen has been reduced. The approved topical report evaluated postulated accidents that involved adverse core conditions and the release of radionuclides and found the M5 alloy to perform similar to the current fuel rod cladding material. Rod cladding failures are assumed to occur in the fuel handling accident; however, the consequences of this event is independent of the properties of the fuel rod cladding. This is based on the fuel handling event assuming the rupture of fuel rods regardless of the rod cladding material. Therefore, based on the topical report results, the proposed revision to allow the use of M5 fuel rod cladding material will not significantly increase the consequences of an accident and the potential for the release of radioactive material to the environment.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed M5 rod cladding material has been demonstrated to have properties that are not significantly different than the current zircaloy-4 in maintaining the integrity of the fuel rods. The new material will not alter the functions of the rod cladding which is to provide a barrier against the release of radioactive material. Initial plant conditions, which is considered in the accident analysis, will also be maintained such that no new plant conditions will exist that could affect the analysis results. Since plant functions and conditions are not impacted by the proposed revision and the new M5 rod cladding is not postulated to become an accident initiator based on the similarity with zircaloy-4, the possibility of a new or different kind of accident is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety is established by the acceptance criteria used by NRC. Meeting the acceptance criteria assures that the consequences of accidents are within known and acceptable limits. The loss-of-coolant accident (LOCA) acceptance criteria are unchanged: peak cladding temperature of ≤ 2200 degrees Fahrenheit; maximum cladding oxidation of ≤17 percent of the total cladding thickness before oxidation; maximum hydrogen generation of ≤1 percent of the hypothetical amount if all of the cladding metal were to react; coolable geometry such that the core remains amenable to cooling; and long-term cooling to maintain core temperature at an acceptably low value and removal of decay heat for an extended period.

These requirements continue to be met with the new M5 fuel rod cladding material. The acceptance criteria for Departure from Nucleate Boiling (DNB) events has not changed and is still the 95 percent probability and 95 percent confidence interval that DNB is not occurring during the transient. The changes to material properties have been evaluated in BAW–10227P–A and all applicable acceptance criteria are met. In addition, the proposed revision to allow the use of M5 fuel rod cladding will not impact plant setpoints that maintain the margin of safety. Based on these results, it is concluded that the margin of safety is not significantly 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 P. Correia.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: March 6, 2000 (ULNRC–04197).

Description of amendment request: The proposed amendment will revise Table 3.7.1–1, ''Operable Main Steam Safety Valves [MSSVs] versus Maximum Allowable Power,'' of the technical specifications to reduce the maximum allowable reactor power for a given number of operable MSSVs per steam generator. There are five MSSVs on each of the four steam generators for the plant. This change will increase restrictions on the operation of the plant to account for (1) Westinghouse letter, SCP–99–129, dated July 7, 1999, and (2) Westinghouse Nuclear Safety Advisory Letter, NSAL–94–001, dated January 20, 1994. This change will decrease the setpoint values for the power range neutron flux high channels, which are part of the reactor trip system (RTS) instrumentation in Table 3.3.1–1, ''Reactor Trip System Instrumentation,'' of the TSs, and will result in the reactor being shut down at a lower reactor power for a given number of operable MSSVs per steam generator. There is also a change to the Required Action

A.1 for Limiting Condition for Operation (LCO) 3.7.1, ''Main Steam Safety Valves (MSSVs).'' The licensee has administrative controls in place to ensure that the proposed reduced maximum allowable reactor power values are in effect at the plant.

In addition to the changes to LCO 3.7.1 above, the licensee also proposed to correct two format errors in the actions for LCO 3.7.1. The first correction is to add a separating line between Conditions A and B; the second correction is to move the word ''(continued)'' above the bottom line for Condition B. Neither of these corrections have any affect on the requirements stated in LCO 3.7.1. The licensee also showed the changes to the Bases of LCO 3.7.1 that are related to the proposed amendment including two editorial corrections to the Bases.

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 operability of the MSSVs ensures that the secondary side system pressure is limited to within 110% of its design pressure during the most severe anticipated system operational transient, which is the Loss of Load/Turbine Trip Event. As stated in FSAR [Callaway final safety analysis report] 15.2.3.3, these events do not present a hazard to the integrity of the reactor core, the reactor coolant system, or the main steam system. The Power Range Neutron Flux High Reactor Trip function and the MSSVs are designed to mitigate the consequences of the Loss of Load/Turbine Trip event. The Loss of Load event is initiated as a result of an electrical system disturbance and the Turbine trip event is initiated as a result of a signal derived from the turbine emergency trip fluid pressure transmitters and turbine stop valve limit switches.

The Power Range Neutron Flux High Reactor Trip function and the MSSVs ensure that the FSAR Loss of Load/Turbine Trip analyses are bounding for cases when not all of the MSSVs are operable. Technical Specification Table 3.7.1–1 controls the Power Range Neutron Flux High Setpoints when a MSSV is found to be inoperable. The controls under this proposed change, which are more restrictive than the ones in Technical Specification Table 3.7.1–1, do not install or modify any plant equipment. The revised Power Range Neutron Flux High Setpoints with inoperable MSSVs proposed under this change are bounded by the reactor trip setpoints currently provided in Table 3.7.1–1. In addition the functionality of plant equipment is unaffected by the proposed change.

Therefore, these 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 ensure that the FSAR Loss of Load/Turbine Trip analyses are bounding for cases when not all of the MSSVs are operable. Furthermore, the changes do not result in any previously incredible accidents becoming credible. No additional equipment is being [added to the plant or] credited in the mitigation of any [FSAR] Chapter 15 accident events, and the proposed changes do not invalidate any previous conclusions.

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.

Using the Power Range Neutron Flux High Setpoints with inoperable MSSVs provided by Westinghouse (Reference 2 [in the licensee's application letter]) in lieu of the ones calculated using the equation provided in the Current Technical Specifications Bases, results in more conservative reactor trip setpoints. This increases the margin of safety. The margin of safety as determined in the basis for the Technical Specification is not reduced.

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: John O'Neill, Esq., Shaw, Pittman, Potts & 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.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: February 18, 2000.

Description of amendment request: The amendment requests approval to Baltimore Gas and Electric Company's (BGE's) operating license that the new identified failure mode is acceptable on the basis that BGE will assure on every shift that safety-related loads are sufficiently available to Diesel Generator 1A to ensure the minimum load is met.

Date of publication of individual notice in ***Federal Register:*** March 7, 2000 (65 FR 12038).

Expiration date of individual notice: April 6, 2000.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 26, 1999, as supplemented January 20, 2000.

Brief description of amendment: The proposed amendment would revise Technical Specifications associated with the degraded voltage trip and the under-frequency reactor trip surveillance tests.

Date of publication of individual notice in ***Federal Register:*** February 28, 2000 (65 FR 10565).

Expiration date of individual notice: March 29, 2000.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 27, 2000.

Brief description of amendments: The amendments revised the Facility Operating Licenses by (a) deleting the license conditions that have been fulfilled by actions that have been completed, (b) changing the license conditions that have been superseded by the current plant status, and (c) incorporating other administrative changes.

Date of publication of individual notice in ***Federal Register:*** February 8, 2000 (64 FR 6243).

Expiration date of individual notice: March 9, 2000.

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 Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 16, 1999.

Brief description of amendment: The amendment allowed a one-time extension of some Technical Specification surveillance intervals to support elimination of a planned spring 2000 midcycle outage. The surveillances would be extended to no later than November 30, 2000.

Date of issuance: March 17, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 125.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1921).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 25, 1999 (U–603282).

Brief description of amendment: The amendment revised the Technical Specification allowable values for the reactor protection system electric power monitoring assembly overvoltage and undervoltage trip setpoints.

Date of issuance: March 21, 2000.

Effective date: Immediately upon date of issuance and shall be implemented within 30 days.

Amendment No.: 126.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1919).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: May 13, 1999.

Brief description of amendment: The amendment revised Sections 2.a., 2.c.(3) and 2.c.(7) of the Facility Operating License to delete already completed license conditions or update out-of-date reporting references, and made a change to the Bases of Technical Specification 3.1.1 regarding the pressurizer safety valves lift setpoint.

Date of issuance: March 14, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 222.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** June 30, 1999 (64 FR 35206).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: November 18, 1999.

Brief description of amendment: The amendment incorporated a change in the pressure-temperature curves in the Calvert Cliffs Nuclear Power Plant, Unit No. 1 Technical Specifications. Baltimore Gas and Electric Company changed the fluence level for which the curves are valid from 2.61×10^{19} n/cm^2 to 4.49×10^{19} n/cm^2.

Date of issuance: March 20, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 234.

Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70078).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendment: February 21, 2000.

Brief description of amendment: The amendment changed Technical Specification Surveillance Requirement 4.0.5.f to allow the required examination of weld RH–2005–29 to be deferred until the next scheduled refueling outage or December 31, 2000, whichever is earlier.

Date of issuance: March 22, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 123.

Facility Operating License No. NPF–18: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (65 FR 11809 dated March 6, 2000). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 5, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment,

finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated March 22, 2000.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: December 17, 1999, as supplemented January 26, 2000.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 3.6.1.3.9 to allow a representative sample of reactor instrumentation line excess flow check valves to be tested every 18 months, instead of testing each excess flow check valve every 18 months.

Date of issuance: March 14, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 137.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4270) The January 26, 2000, 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 March 14, 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: November 3, 1999, as supplemented by letter dated January 14, 2000.

Brief description of amendments: The amendments revised the Technical Specifications Surveillance Requirements (SR) 3.8.1.13 and SR 3.8.1.14 for emergency diesel generators at Catawba Nuclear Station. Specifically, these SR may now be performed at any operational power level for Catawba Nuclear Station. In addition, in November 3, 1999, application, licensee requested that the power factor requirements be deleted from SR 3.8.1.9, and 3.8.1.14. However, licensee withdrew the power factor deletion part of the request for Catawba Nuclear Station, Units 1 and 2, in a letter dated January 14, 2000.

Date of issuance: March 16, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–185; Unit 2–177.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67332).

The January 14, 2000, letter provided additional clarifications that did not enlarge the scope of the previous no significant hazard consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 3, 1999, as supplemented by letters dated January 14 and February 17, 2000.

Brief description of amendments: The amendments revise the following Technical Specifications Surveillance Requirements (SR): (1) SR 3.8.1.9 to allow performance of the diesel generator (DG) load rejection test at any operational power level and to delete the power factor requirements, (2) SR3.8.1.10 to allow performance of the DG full load rejection test at any power level, and (3) SR 3.8.1.14 to allow performance of the 24-hr DG run at any operational power level and delete the power factor requirement. No plant modification is involved.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–192; Unit 2–173.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67333).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 27, 2000.

Brief description of amendments: The amendments revised the Facility Operating Licenses by (a) Deleting the license conditions that have been fulfilled by actions that have been completed, (b) Changing the license conditions that have been superseded by the current plant status, and (c) Incorporating other administrative changes.

Date of Issuance: March 13, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–311; Unit 2–311; Unit 3–311.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Facility Operating Licenses and License Conditions.

Date of initial notice in ***Federal Register:*** February 8, 2000 (65 FR 6243).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

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: October 29, 1999.

Brief description of amendment: This amendment authorizes a revision to the post loss-of-coolant accident (LOCA) dose calculations described in the River Bend Station (RBS) Updated Safety Analysis Report (USAR). The analyses are being updated to account for several changes that were determined by the licensee to involve an unreviewed safety question in accordance with title 10 of the *Code of Federal Regulations,* section 50.59(a)(2)(i). Specifically, the licensee requested the following changes to the RBS USAR, Sections 6.2.3 and 15.6.5:

Increase of the positive pressure period of the secondary containment following a design basis accident to 195.5 seconds from 189 seconds.

Decrease of the suppression pool water volume to 1.2E5 ft^3 from 1.35E5 ft^3 for use in the post-LOCA dose calculation.

Change to the engineered safety feature (ESF) liquid leakage model adding the leakage resulting from a gross failure of a passive component outside of primary containment.

Direct release of ESF leakage through the Standby Gas Treatment System to the environment without hold up in the auxiliary building.

Date of issuance: March 17, 2000.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 111.

Facility Operating License No. NPF–47: The amendment revised the USAR.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70084).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: November 18, 1999.

Brief description of amendment: This amendment removes license condition 3.H, ''Long Term Program,'' from Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station.

Date of issuance: March 13, 2000.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 183.

Facility Operating License No. DPR–35: Amendment revised the License.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6404).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 5, 1999, as supplemented January 31, 2000.

Brief description of amendment: This amendment modifies the licensing basis for the on-site fuel storage requirements for the emergency diesel generators. Various sections of the technical specifications were amended to reflect the new licensing basis.

Date of issuance: March 17, 2000.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 184.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 2, 1999 (64 FR 29708).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 3, 1998, as supplemented by letter dated October 7, 1999.

Brief description of amendment: This amendment authorizes revision of the Grand Gulf Nuclear Station Updated Final Safety Analysis Report for implementation of a limited scope application of the alternative accident source term described in NUREG–1465. The amendment allows a change in the minimum time assumed for the onset of fission product release from perforated fuel rods following a postulated design basis loss-of-coolant accident.

Date of issuance: March 22, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No: 143.

Facility Operating License No. NPF–29: The amendment changes the Grand Gulf Nuclear Station design basis by revising the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67333).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 2, 1999.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to (1) Relocate the requirements of TS 3/4.1.2.8, Reactivity Control Systems—Borated Water Sources—Shutdown, in its entirety, to the DBNPS Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM); (2) Relocate the requirements of TS 3/4.1.2.9, Reactivity Control Systems—Borated Water Sources—Operating, to the USAR TRM, except for portions applicable to the Borated Water Storage Tank, which have been deleted because they are redundant to the existing provisions of TS 3/4.5.4, Emergency Core Cooling Systems—Borated Water Storage Tank; (3) Modify TS 3/4.1.2.1, Reactivity Control Systems—Borated Water Sources—Shutdown, by deleting references to TS 3.1.2.8; (4) Incorporate corresponding changes to the TS index; and (5) Incorporate corresponding changes to the TS Bases.

Date of issuance: March 14, 2000.

Effective date: Immediately upon date of issuance and shall be implemented within 120 days.

Amendment No.: 238.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: September 8, 1998.

Brief description of amendment: This amendment revises Technical Specification (TS) 5.3.1, ''Design Features—Reactor Core—Fuel Assemblies,'' and TS Bases Section 2.1, ''Safety Limits.'' The amendment permits the use of the Framatome Cogema Fuels ''M5'' advanced alloy for fuel rod cladding and fuel assembly spacer grids.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 239.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 1998 (63 FR 53961).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida.

Date of application for amendments: November 23, 1999, as supplemented March 9, 2000.

Brief description of amendments: The amendments revised the Technical Specifications (TS) surveillance testing of the safety-related ventilation system charcoal to meet the actions requested in Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999. Other systems impacted include the emergency containment filtering system,

post accident containment vent system, and the control room emergency ventilation system.

Date of issuance: March 21, 2000.

Effective date: March 21, 2000.

Amendment Nos.: 205 and 199.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70089). The March 9, 2000, submittal provided clarifying information that did not change the scope of the original request or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida.

Date of application for amendment: February 19, 1999, as supplemented February 23, 2000.

Brief description of amendment: Changes the Crystal River Unit 3 Technical Specifications (TS) to incorporate the requirements of 10 CFR 50.55a relating to containment inspections.

Date of issuance: March 16, 2000.

Effective date: March 16, 2000.

Amendment No.: 191.

Facility Operating License No. DPR–72: Amendment revised the TS.

Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56530). The February 23, 2000, supplement did not affect the original no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 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: December 3, 1998.

Brief description of amendments: The amendments incorporate the Distribution Ignition System requirements into the Unit 1 and Unit 2 Technical Specifications.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 242 and 223.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4279).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 31, 1999.

Brief description of amendment: The change modifies Cooper Nuclear Station's Technical Specifications, Section 5.3.1, ''Unit Staff Qualifications.'' The change endorses the provisions of Regulatory Guide 1.8, Revision 2, ''Qualification and Training of Personnel for Nuclear Power Plants,'' for the shift supervisor, senior operator, licensed operator, shift technical advisor, and radiological manager.

Date of issuance: March 15, 2000.

Effective date: March 15, 2000, to be implemented within 30 days.

Amendment No.: 181.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 5, 1999 (64 FR 24197).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 23, 1999, as supplemented December 7, 1999.

Brief description of amendment: The amendment updates the list of documents which describe the analytical methods used to determine the core operating limits specified in Technical Specification 6.9.1.8b.

Date of issuance: March 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 242.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4284).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: September 27, 1999.

Brief description of amendments: Revised the technical specifications to clarify several administrative requirements, delete redundant requirements, and correct typographical errors, and are considered administrative in nature.

Date of issuance: March 14, 2000.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: Unit 1–139; Unit 2–102.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 1999 (64 FR 62714).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 9, 1996, as supplemented June 6, 1997, and June 7, 1999.

Brief description of amendment: The amendment removes the requirement for the Plant Operating Review Committee review of the fire protection program and implementing procedures.

Date of issuance: March 13, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 201.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67339).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 24, 1997, as supplemented,

January 8, September 21, and December 22, 1998; and January 7, February 17, June 21, and August 23, 1999, and February 7, 2000.

Brief description of amendments: These amendments revise the Salem Technical Specifications (TSs), Section 3/4.7.7, ''Auxiliary Building Exhaust Air Ventilation System,'' to require two auxiliary building ventilation system (ABVS) supply fans, and three ABVS exhaust fans to be operable, and clarify administrative controls.

Date of issuance: March 21, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 228 and 209.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 17, 1997 (62 FR 66140).

The January 8, September 21, and December 22, 1998; and January 7, February 17, June 21 and August 23, 1999; and February 7, 2000, letters provided clarifying information that did not change the staff's initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application or amendments: November 30, 1999.

Brief description of amendments: The amendments revise Technical Specifications and associated Bases to Surveillance Requirement 3.8.1.12 to remove the restriction which prevents performance of the diesel generator 24-hour run while operating in either Mode 1 or 2.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–218; Unit 2–159.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73098)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 15, 1999.

Brief description of amendments: The amendments revise the Safety Limit Minimum Critical Power Ratios (SLMCPR) in Technical Specification 2.1.1.2 to reflect the results of a cycle-specific calculations for Unit 1 Cycle 19 and Unit 2 Cycle 16. The calculations were performed using the new NRC-approved methodology for determining SLMCPRs.

Date of issuance: March 22, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–219; Unit 2–160.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 1999 (64 FR 62715 and 64 FR 62716).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: April 6, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to allow an increase of 168 fuel assemblies in the storage capacity of Unit 1's spent fuel pool and an increase of 88 fuel assemblies in the storage capacity of Unit 2's spent fuel pool.

Date of issuance: March 23, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–220; Unit 2–161.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 4, 1999 (64 FR 23877).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: November 12, 1999 (PCN–505).

Brief description of amendments: The amendments revise Technical Specification 5.5.2.13, ''Diesel Fuel Oil Testing Program.''

Date of issuance: March 20, 2000.

Effective date: March 20, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—167; Unit 3–158.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67339).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: September 28, 1999, as supplemented February 4, 2000 (TS–399).

Brief description of amendments: The Technical Specifications (TS) have been changed to increase the allowable leakage for any one of the four main steam line (MSL) penetrations from 11½ to 100 standard cubic feet per hour (scfh), and to establish a 150 scfh limit on the maximum allowable combined leakage of all four MSL penetrations.

Date of issuance: March 14, 2000.

Effective date: March 14, 2000.

Amendment Nos.: 263 and 223.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the TS.

Date of initial notice in ***Federal Register:*** November 3, 1999 (64 FR 59807). The supplemental letter dated February 4, 2000, contained clarifying information that did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated February 22, 2000, and a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: September 30, 1999, as supplemented February 29, 2000.

Brief description of amendment: The amendment revises the Technical Specifications (TS) analytical methods for core operating limits to implement an analysis supporting a more negative moderator temperature coefficient for the end-of-cycle, rated thermal power condition.

Date of issuance: March 14, 2000.

Effective date: March 14, 2000.

Amendment No.: 20.

Facility Operating License No. NPF–90: Amendment revises the TS.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4291). The supplemental letter dated February 29, 2000, contained clarifying information and did not change the initial proposed No Significant Hazards Consideration Determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: June 25, 1999, as supplemented January 25, 2000.

Brief description of amendment: The amendment changes the Technical Specifications (TS) to apply the Westinghouse generic best estimate large break loss-of-coolant accident analysis methodology, using the WCOBRA/TRAC code to the Watts Bar Unit 1 plant.

Date of issuance: March 17, 2000.

Effective date: March 17, 2000.

Amendment No.: 21.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 611). The January 25, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: November 15, 1999 (TS 99–16).

Brief description of amendment: The amendment changes the methodology and frequency for sampling the ice condenser ice bed (stored ice) and adds a new Technical Specification (TS) and associated Bases to change the methodology and frequency for sampling requirements for all ice additions to the ice bed.

Date of issuance: March 21, 2000.

Effective date: March 21, 2000.

Amendment No.: 22.

Facility Operating License No. NPF–90: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70092).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 28, 1999, as supplemented December 21, 1999.

Brief description of amendments: The amendments remove the operability and surveillance requirements of Technical Specifications (TS) Section 3/4.6.4.3, ''Waste Gas Charcoal Filter System,'' from the TS and relocate them to the Technical Requirements Manual.

Date of issuance: March 13, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 222 and 203.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6412).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: July 1, 1999.

Brief description of amendments: These amendments reflect a change to Technical Specification Section 15.5.4. The amendments remove one of the two separate methods for verifying the acceptability of reactor fuel for placement and storage in the spent fuel pool and new fuel storage vault.

Date of issuance: March 20, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 194 and 199.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 28, 1999 (64 FR 40911).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: November 15, 1999.

Brief description of amendments: This amendment changes the control rod surveillance interval in TS Table 15.4.1–2, Item 10, ''Partial movement of all rods,'' from once ''Every 2 weeks'' to ''Quarterly.'' This change implements the recommendation of NRC Generic Letter 93–05, ''Line Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation.''

Date of issuance: March 22, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 195 and 200.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73103).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2000.

No significant hazards consideration comments received: No.

Wisconsin Public Service Corporation,Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 22, 1999, as supplemented on December 2, 1999, and January 17, 2000.

Brief description of amendment: The amendment extends the application of the length-based pressure boundary definition (L-criterion) for the Westinghouse mechanical hybrid expansion joints in sleeved steam generator tubes to the end of operating cycle 24.

Date of issuance: March 15, 2000.

Effective date: Immediately upon its date of issuance and is to be implemented within 30 days of the date of issuance.

Amendment No.: 146.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4266).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1999.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.4.10, Pressurizer Safety Valves [PSV], of the improved Technical Specifications (TSs) issued March 31, 1999. The amendment reduced the safety valve set pressure in Limiting Condition for Operation (LCO) 3.4.10 and decreased the setpoint in Surveillance Requirement (SR) 3.4.10.1. The PSV setpoint and setpoint tolerance were changed from 2485 psig ±1% to 2460 psig ±2% in the LCO. The tolerance of ±1% in the SR for resetting the setpoint after testing, it needed, was not changed.

Date of issuance: March 23, 2000.

Effective date: March 23, 2000, and shall be implemented before the restart from refueling outage 11, which is the next refueling outage scheduled to begin October 2000.

Amendment No.: 133.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 1999 (64 FR 62718).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 2000.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 application for amendment, (2) the amendment to Facility Operating License, 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).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By May 5, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: February 18, 2000, as supplemented March 8, 2000.

Description of amendment request: The amendment changes current Technical Specification (TS) 4.9a.2 and improved TS 3.7.5 and its associated bases to remove requirements associated with the backup steam supply to turbine-driven auxiliary feedwater pump P–8B.

Date of issuance: March 14, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days, except that implementation with respect to the improved TSs shall be on or before October 31, 2000.

Amendment No. 190.

Facility Operating License No. DPR–20: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (65 FR 11089, March 1, 2000). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The notice also provided for an opportunity to request a hearing by March 31, 2000, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 14, 2000.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: February 25, 2000.

Brief description of amendment: The amendment revised Technical Specification Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation'' to provide a one-time exception, until the next time the turbine is removed from service, from the requirement to perform response time testing for the solenoid valve 1–FSV–47–027. The amendment also supersedes the Notice of

Enforcement Discretion granted on February 23, 2000, and confirmed by letter dated February 25, 2000 (00–6–004).

Date of issuance: March 22, 2000.

Effective date: March 22, 2000.

Amendment No.: 23.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (65 FR 11348 dated March 2, 2000). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 15, 2000, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated March 22, 2000.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Dated at Rockville, Maryland, this 29th day of March 2000.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8211 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Facility Operating License No. DPR–64, Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated February 10, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists (Petitioner), has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 3 (IP3), owned and operated by the Power Authority of the State of New York (the licensee). The Petitioner requests that the NRC order the licensee to assess the corrective action program and the work environment at IP3 and to take immediate actions to remedy any deficiencies they identify. The Petitioner requested that this order be closed out before the sale of IP3 is authorized.

As the basis for this request, the Petitioner states that the NRC's new safety monitoring program assumes that the licensee has both a safety-conscious work environment and an effective method of correcting identified problems. In support of this request, the Petitioner cites concerns by a former member of the licensee's Operations Review Group (ORG) that the corrective action process at IP3 is not effective and that the work environment in the ORG is not safety-conscious. The Petitioner also cites several NRC letters that point out deficiencies in the licensee's corrective action program and one letter that points out an apparent instance of discrimination against an employee who raised safety concerns. In a telephone conference on February 16, 2000, the Petitioner voiced concern that under the NRC's new risk-informed inspection process a breakdown in the licensee's corrective action procedures for a non safety-related system would not be pursued. The Petitioner expressed concern that NRC inspectors might not be able to identify a programmatic breakdown in the licensee's corrective action process before such a breakdown affected plant safety.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

A copy of the Petition is available for 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 24th day of March 2000.

For the Nuclear Regulatory Commission.

Jon R. Johnson,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8335 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–U

POSTAL SERVICE

Request for Comments on Revising and Updating Five-Year Strategic Plan, Pursuant to the Government Performance and Results Act of 1993

AGENCY: Postal Service.

ACTION: Request for comments.

SUMMARY: The Government Performance and Results Act of 1993 (GPRA) mandated, in 1997, that the Postal Service publish a five-year plan outlining its goals, targets, and strategies, and that the Postal Service update and revise its five-year plan at intervals of no less than three years. In so doing, GPRA states that the Postal Service must, as an aspect of its strategic planning process, solicit and consider the ideas, knowledge, and opinions of those potentially affected by or interested in its Five-Year Strategic Plan. This notice, therefore, asks for public comment concerning the development and drafting of the Postal Service's Five-Year Strategic Plan for fiscal years 2001–2005.

DATES: Comments must be received by May 15, 2000.

ADDRESSES: Written comments should be directed to Robert A.F. Reisner, Vice President, Strategic Planning, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1520. Comments may also be sent to: stratpln@email.usps.gov.

FOR FURTHER INFORMATION CONTACT: Paul Van Coverden, (202) 268–8130.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Government Performance and Results Act of 1993, Pub. L. 103–62 (GPRA), was enacted to make federal programs more effective and publicly accountable by requiring agencies to institute results-driven improvement efforts, service-quality metrics, and customer satisfaction programs. Other statutory goals were to improve Congressional decision making and the internal management of the United States Government, as cited in Pub. L. 103–62, sec. 2(b), 107 Stat. 285. Because of the Postal Service's role as an independent establishment of the Executive Branch of the Government of the United States, section 7 of the law establishes separate provisions which apply to the Postal Service (sections 2801–2805 of title 39, United States Code).

Section 2802 of title 39, United States Code, required that the Postal Service submit to the President and the Congress a strategic plan for its program

activities, no later than September 30, 1997. Additionally, Section 2802 requires the Postal Service to update and revise its strategic plan at least every three years. The plan is to contain:

(1) A comprehensive mission statement covering the major functions and operations of the Postal Service.

(2) General goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Postal Service.

(3) A description of how the goals and objectives are to be achieved, including a description of the operational processes, skills, and technology, and the human, capital, information, and other resources required to meet the goals and objectives.

(4) A description of how the performance goals included in the annual performance plan required under section 2803 shall be related to the general goals and objectives in the strategic plan.

(5) An identification of the key factors that are external to the Postal Service and beyond its control which could significantly affect the achievement of the general goals and objectives.

(6) A description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations. 39 U.S.C. 2802(a).

GPRA also requires the preparation of annual performance plans covering each program activity set forth in the Postal Service budget. 39 U.S.C. 2803. These plans link the organizational goals in the Strategic Plan with ongoing operations. Finally, the law requires the preparation of annual performance reports, which review and compare actual performance with the performance targets stated in the annual plans. 39 U.S.C. 2804.

In order to continue to involve the public in this planning process, GPRA also requires the Postal Service, as it develops each new iteration of the strategic plan, to ''solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan.'' 39 U.S.C. 2802(d).

Discussion of the Postal Service Mission, Vision, and Objectives

In 1970, the Congress enacted the Postal Reorganization Act, transforming the former Post Office Department into the United States Postal Service. Its intent was to ensure that the former department became a self-sustaining federal entity that operates more like a business. While fulfilling its basic mission of providing universal service at an affordable price, the Postal Service as a unique government enterprise would also focus more clearly on the needs of all its customers than had its predecessor Executive Branch department.

The Postal Reorganization Act states that the Postal Service shall have the ''basic and fundamental'' responsibility to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people. Prompt, reliable, and efficient postal services, the legislation mandates, shall be extended to patrons in all areas and to all communities.

In recent years, the historic mission of the Postal Service, as described in section 101 of title 39, United States Code, has been amplified by an organizational statement of purpose, published most recently in the Preliminary Annual Performance Plan for 2001. That statement describes the Postal Service's role as one ''to provide every household and business across the United States with the ability to communicate and conduct business with each other and the world through prompt, reliable, secure and economic services'' for the collection, transportation, and delivery of messages, merchandise, and money.

A vision statement, published most recently in the Preliminary Annual Performance Plan for 2001, describes the strategic direction the Postal Service intends to take in order to continue to achieve its mission and statement of purpose. The vision statement says, ''Within the decade ahead, the Postal Service must be transformed into a high-performing enterprise, able to compete with agile competitors, to be responsive to more sophisticated customer demands, and to establish goals aligned with the vision of becoming the service customers choose to use, rather than have to use. All employees must have appropriate incentives and tools, not only to service their customers, but to meet or exceed competitors' offerings. We must, in short, develop an operationally excellent, financially sound, performance-based culture and mindset. Given our expectations and beliefs about the future marketplace, it is imperative that the Postal Service achieve a state of operational excellence and competitive performance so high that a partial loss of the letter monopoly would not make a difference to our ability to serve customers and to our success.''

Solicitation of Comments

The United States Postal Service solicits comment on core statements that seek to interpret the Postal Service's statutory mission in a 21st century market context. Specifically, it asks for stakeholder comment on:

(1) The Postal Service role and responsibility to provide ''universal service'' and what that should entail.

(2) The scope of postal services necessary and appropriate ''to bind the nation together.''

(3) The impact of the development of new technologies on the public service objectives of universal service, and whether those objectives might be achieved through alternative means.

(4) The Postal Service vision of the necessity to transform itself into a high-performing, agile, customer-responsive enterprise able to compete in a re-regulated future business environment.

(5) Steps for improving the businesslike operation of the Postal Service.

(6) Other topics relating to the competitive, customer, regulatory, technology, and organizational dimensions of the postal business environment as they may affect the Postal Service's mission, statement of purpose, and vision.

The Postal Service also invites comment on its long-range organizational goals, or objectives, published most recently in the Preliminary Annual Performance Plan for 2001. The Postal Service has employed long-range goals, or objectives, as part of a strategic planning process for nearly two decades, along with systematic assessments of performance. Since 1994, when the Postal Service applied the Malcolm Baldrige National Quality Award criteria to create its CustomerPerfect! performance management system, the Postal Service has used process management tools and an annual cycle of goal definition, deployment, review, and assessment to improve organizational performance by revising and updating goals and strategies. The input of the public will support and enhance both the performance management process and the new Five-Year Strategic Plan.

Specifically, the Postal Service solicits stakeholder comment on the following long-range organizational goals:

(1) Voice of the Customer goal: To earn customers' business in a marketplace where they have choices by providing them with world-class quality at competitive prices.

(2) Voice of the Employee goal: To foster an inclusive and welcoming workplace consistent with Postal Service values of fairness, opportunity, safety, and security; where everyone is

given the knowledge, tools, training, and encouragement to be successful; and where everyone is recognized for and takes pride in their participation in customers' and the Postal Service's success.

(3) Voice of the Business goal: To generate financial performance that assures the commercial viability of the Postal Service as a service provider in a changing, competitive marketplace, and generate cash flow to finance high-yield investments for the future while providing competitively priced products and services.

Any comments pertaining to the means by which the Postal Service can best achieve these goals are welcome. Comments on other aspects of strategic planning, goal-definition, and performance measurement are also welcome.

This request for comments initiates a formal process for the development of the 2001–2005 Five-Year Strategic Plan and offers an opportunity for stakeholder comments to be given careful consideration in the development of the plan's goals, targets, and strategies. While its May 15 deadline corresponds with a need and requirement for formality in the development of this plan, the strategic planning process itself is continuous and welcomes ongoing input from all stakeholders in the development of annual business environmental assessments, annual performance plans, and annual performance reports.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–8281 Filed 4–4–00; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24370; File No. 812–11890]

Fidelity Investments Life Insurance Company, et al.

March 29, 2000.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'') approving certain substitution of securities.

Applicants: Fidelity Investments Life Insurance Company (''FILI''), Fidelity Investments Variable Annuity Account I (''Account I''), Empire Fidelity Investments Life Insurance Company (''EFILI''), Empire Fidelity Investments Variable Annuity Account A (''Account A'') and Fidelity Brokerage Services, Inc. (''FBSI'') (hereinafter ''Applicants'').

Summary of Application: Applicants request an order to permit the substitution of shares of Variable Insurance Products Fund III Mid Cap Portfolio Initial Class (''Mid Cap''), a fund affiliated with FILI and EFILI, for shares of Strong Discovery Fund II Portfolio (''Discovery''), a fund currently held by Account I and Account A to support certain deferred and immediate variable annuity contracts. FILI's and EFILI's variable annuity contracts are referred to herein as the ''Contracts.''

Filing Date: The Application was filed on December 15, 1999, and was amended and restated on March 23, 2000.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 28, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805, Attention: Michael Berenson, Esq.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942–0699, or William J. Kotapish, Assistant Director, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (Tel. (202) 942–8090).

Applicants' Representations

1. FILI is a stock life insurance company organized under the laws of the State of Utah. FILI was organized under the laws of the Commonwealth of Pennsylvania and redomesticated to Utah in 1992. FILI offers life insurance policies and annuity contracts in 49 states and the District of Columbia.

2. EFILI is a stock life insurance company organized under the laws of the State of New York. EFILI offers life insurance policies and annuity contracts solely in the State of New York.

3. EFILI is a direct, wholly-owned subsidiary of FILI. FILI is a direct, wholly-owned subsidiary of FMR Corp., the parent company of the group of companies commonly known as Fidelity Investments.

4. Account I is a separate account of FILI which acts as a funding vehicle for FILI's deferred and immediate variable annuity contracts. Account A is a separate account of EFILI which acts as a funding vehicle for EFILI's deferred and immediate variable annuity contracts. Account I and Account A are referred to herein as ''Separate Accounts.''

5. The assets of Account I and Account A are owned by FILI and EFILI, respectively. The obligations under FILI's Contracts are obligations of FILI and the obligations under EFILI's Contracts are obligations of EFILI. FILI and EFILI are required to maintain sufficient assets in Account I and Account A, respectively, to meet anticipated obligations of the Contracts.

6. The assets of Account I and the assets of Account A are kept separate from the other assets of FILI and EFILI, respectively. The income, gains, and losses of each of the Separate Accounts, whether or not realized, are credited to or charged against the Separate Account without regard to other income, gains, or losses of any other separate account or arising out of any other business FILI or EFILI may conduct.

7. Account I and Account A each has 28 investment divisions (''Subaccounts''), each of which invests exclusively in a single underlying mutual fund portfolio registered as an open end management investment company. The 28 portfolios are members of five different mutual fund families: Fidelity (13 portfolios), Morgan Stanley Asset Management (four portfolios), Strong (three portfolios), PBHG (five portfolios) and Warburg Pincus (three portfolios). The portfolios span a wide variety of investment objectives and policies.

8. Account I was established by FILI as a separate account on July 22, 1987, pursuant to a resolution of FILI's Board of Directors. Account I is a unit investment trust (''UIT'') and has filed a registration statement with the Commission on Form N–4 (Registration No. 33–24400) for the purpose of registering Account I under the 1940

Act and to register its deferred variable annuity contracts under the Securities Act of 1933 (the ''1933 Act''). Account I has also filed a registration statement under the 1933 Act for its immediate variable annuity contracts (Registration No. 33–54926).

9. Account A was established by EFILI as a separate account under the laws of the State of New York on July 15, 1991, pursuant to a resolution of EFILI's Board of Directors. Account A is a UIT and has filed a registration statement on Form N–4 (Registration No. 33–42376) for the purpose of registering Account A under the 1940 Act and registering its deferred variable annuity contracts under the 1933 Act. Account A has also filed a registration statement under the 1933 Act for its immediate variable annuity contracts (Registration No. 33–54924).

10. FBSI is the principal underwriter for all the Contracts. FBSI is registered with the Commission under the Securities Exchange Act of 1934 (the ''1934 Act'') as a broker/dealer and is a member of the National Association of Securities Dealers, Inc.

11. The Contracts are immediate variable annuity contracts (''Immediate Contracts'') and deferred variable annuity contracts (''Deferred Contracts''). FILI's and EFILI's Immediate Contracts are identical in all respects material to the Application except as specifically noted herein below. FILI's and EFILI's Deferred Contracts are also identical in all respects material to the Application except as specifically noted herein below.

12. The Deferred Contracts are offered as non-qualified contracts and Individual Retirement Annuity contracts. The Immediate Contracts are offered as non-qualified contracts, Individual Retirement Annuity contracts, and Section 403(b) tax-sheltered annuity contracts. Contracts offered on a non-qualified basis are purchased with after-tax dollars. Contracts offered as Individual Retirement Annuities can be purchased only with dollars rolled over from other individual retirement arrangements, 403(b) plans or qualified plans. Contracts offered as Section 403(b) tax-sheltered annuities can be purchased only with dollars in 403(b) arrangements.

13. Deferred Contracts have no front-end or contingent deferred sales load.

14. There are currently no limits on the number of permitted transfers among Subaccounts under Deferred Contracts. FILI reserves the right to limit the number of permitted transfers to not less than five per years, and, for Contracts issued after May 1, 1997, to impose a transfer fee for transfers in excess of twelve per calendar year. Currently FILI imposes no transfer fee and no limit on the number of transfers. EFILI reserves the right to limit the number of permitted transfers to not less than six per years, and to impose a charge not to exceed $15 per transfer for transfers in excess of six per year. Currently EFILI imposes no transfer fee and no limit on the number of transfers.

15. Deferred Contracts have an annual maintenance charge of $30. This charge is currently waived for any Deferred Contract containing at least $25,000 of premium payments. This charge may be reduced or waived for FILI's Deferred Contracts issued under certain sponsored arrangements.

16. Deferred Contracts impose daily charges against the assets of the Separate Accounts attributable to the contracts at an annual rate of 0.80%. Of this amount, 0.75% is for the assumption of mortality and expense risks, and 0.05% is an administrative charge.

17. Immediate Contracts have no front end or contingent deferred sales load.

18. There are currently no limits on the number of permitted transfers among Subaccounts under Immediate Contracts. FILI and EFILI reserve the right to limit the number of permitted transfers to not less than six per year. Immediate Contracts have no transfer charges.

19. Immediate Contracts have no annual contract fee.

20. Immediate Contracts impose daily charges against the assets of the Separate accounts attributable to the contracts at an annual rate of 1.00%. Of this amount, 0.75% is for the assumption of mortality and expense risks, and 0.25% is an administrative charge.

21. The Contracts expressly reserve FILI's and EFILI's right to make additions to, deletions from, or substitutions for any of the investment portfolios in which the Subaccounts invest, subject to obtaining all necessary approvals.

22. Mid Cap is not currently an investment option under the Contracts. It will be added as an investment option effective April 30, 2000. In this regard, FILI and EFILI will each create a new subaccount of their respective Separate Accounts. The new subaccounts will hold the shares of Mid Cap.

23. FILI and EFILI propose to exercise their contractual right to eliminate Discovery as an investment option under the Contracts, and to substitute shares of Mid Cap. The subaccounts currently holding shares of Discovery would be merged into the subaccounts already holding shares of Mid Cap following the substitution. The substitution would not result in a reduction in the number of variable investment options under the Contracts, which would remain at 28. The substitution will take place (contingent upon the requested Order) on a date selected by FILI and EFILI, currently anticipated to be on or about May 29, 2000.

24. As more fully described below, Applicants believe the substitution will benefit Contract owners by eliminating an investment option that has had poor investment performance and replacing it with an investment option having a similar investment objective and better historical performance, and which Applicants believe is likely to have better investment performance in the future. In addition, Mid Cap has had and is expected to continue to have a lower expense ratio than Discovery, providing an additional benefit to Contract owners.

25. The April 30, 2000, prospectuses for the Contracts will disclose the date of the substitution Affected Contract owners (those with Contract values allocated to Discovery) will be notified soon after the Order is granted (if indeed it is) advising them of (1) the pending substitution and of their ability to transfer free of charge to one or more of the remaining subaccounts of their choice in advance of the substitution, and (2) their ability to remain in the subaccount that invests in Discovery until the date of the substitution, and the fact that if they do so they will have values transferred to the new subaccount that will invest in Mid Cap on the date of the substitution.

26. Contract owners who elect to remain in the Discovery subaccount through the date of the substitution will receive confirmations evidencing the substitution in accordance with the provisions of the 1934 Act. Confirmations will be delivered the day after the substitution is effected. The confirmation will be accompanied by a notice reminding Contract owners of their ability to transfer without charge to other subaccounts. Presently, there are no transfer charges under the Contracts. However, if such charges are imposed, Contract owners affected by the substitution will be given 60 days after the substitution to make transfers without charge.

27. FILI and EFILI have sought to provide continuity of investment choice following the substitution, and believe that Discovery and Mid Cap offer important similarities. The investment objective of both Discovery and Mid Cap

is to seek capital growth. Both Discovery and Mid Cap normally invest the bulk of their assets in equity securities, although both can invest in other types of instruments as well. Both can invest in domestic as well as foreign securities. Both can invest in growth stocks or value stocks.

28. Minor differences between the two funds exist. For example, Mid Cap has somewhat less flexibility in its choice of investments, with a policy of investing at least 65% of its assets in securities of companies with medium market capitalizations, while Discovery may invest 100% of its assets in securities of companies of any size.

29. After the substitution, Contract owners invested in Mid Cap instead of Discovery will still be invested in a portfolio seeking capital growth primarily through investment in equity securities.

30. The net expense ratio for Mid Cap is lower than for Discovery. For the fiscal year ended December 31, 1999, the expense ratio for Discovery was 1.10% and the gross expense ratio for Mid Cap was 3.34%. Mid Cap's expenses, however, are subject to a voluntary 1.00% cap, which can be eliminated at any time. If this voluntary cap is eliminated and Mid Cap's expense ratio exceeds 1.00% at any time before July 1, 2001, FILI and EFILI will reimburse, from their general account assets, the accounts of their respective Contract owners who have been affected by the substitution to the extent necessary to limit the expenses actually incurred to 1.00%. Any reimbursement will be calculated on the same basis as under the voluntary cap currently in place and will be made by FILI's or EFILI's purchase of additional units (or fractional units) of the Mid Cap subaccount for the benefit of the accounts of their respective ''substituted'' Contract owners.

31. For the fiscal years ended December 31, 1998, 1997, and 1996 Discovery's total return was 7.3%, 11.4%, and 0.8%, respectively. In each year the fund trailed significantly the performance of its benchmark, the Standard & Poor's Composite Stock Price Index (''S & P 500''), which had returns of 28.58% in 1998, 33.36% in 1997 and 22.96% in 1996. Mid Cap's operations did not commence until December 28, 1998. Through September 30, 1999, Mid Cap's 1999 year to date total return was 12.8% and Discovery's was negative 16.61%. During the same period the S & P 500's return was 5.36%. Mid Cap has substantially outperformed Discovery in 1999, and the Applicants expect that it will continue to do so.

32. Applicants represent that (1) the substitution will be effected by redeeming shares of Discovery in cash on the date of the substitution at net asset value and using the proceeds to purchase shares of Mid Cap at net asset value on the same date; (2) Contract owners will not incur any fees or charges, including brokerage costs, as a result of the transfer of values from Discovery to Mid Cap; (3) all Contract values will remain unchanged and fully invested; (4) the substitution will not increase Contract or Separate Account fees and charges after the substitution; (5) Contract owners' rights and FILI's EFILI's obligations under the Contracts will not be altered in any way; and (6) all expenses incurred in connection with the substitution, including legal, accounting and other expenses, will be paid by FILI and EFILI. In addition, as of the date of filing the Application, Applicants represent that to the best of their knowledge, the substitution will not result in any adverse federal income tax consequences for Contract owners. Following the substitution, the sub-accounts of FILI and EFILI that invest in Discovery will be terminated.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Section 26(b) protects the expectations that the UIT will accumulate shares of a particular issuer. That Section insures that unnecessary or burdensome sales loads, additional reinvestment costs, or other charges will not be incurred due to an unapproved substitution of securities.

3. Applicants represent that the purposes, terms, and conditions of the substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent.

4. Any Contract owner who does not want his or her assets allocated to Mid Cap would be able to transfer assets to any one or more of the other subaccounts available under his or her Contract without charge. Such transfers could be made prior to or after the date of the substitution. Contract owners would, in all cases, have alternative investment options available, and Contract owners could transfer their assets at any time to those alternative options without the imposition of transfer charges or other sales charges.

5. The substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c-1 thereunder. Contract owners will not incur any fees or charges as a result of the transfer of account values from any Portfolio. There will be no increase in the Contract or Separate Account fees and charges after the substitution. All contract values will remain unchanged and fully invested. In addition, as of the date of filing of the Application, Applicants represent that to the best of their knowledge the substitution will not result in any adverse federal income tax consequences for Contract owners.

6. In light of the foregoing facts and representations, Applicants believe that the request to allow the substitution meets the applicable standards for an order under Section 26(b) of the 1940 Act. The application is consistent with applicable precedent. The staff of the Commission has previously granted similar requests for orders pursuant to Section 26(b) of the 1940 Act.

Conclusion

Applicants assert that, for the reasons summarized above, the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8295 Filed 4–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42592; File No. SR–Amex–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Providing Access to the Trading Floor by Allied Members and Former Members

March 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1).

March 7, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[2] and Rule 19b–4(f)(6) thereunder,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its Constitution to provide access to its trading floor (''Trading Floor'' or ''Floor'') by allied members and to establish a formal policy of permitting former members who have worked on the Trading Floor for more than 10 years to visit the Floor. The text of the proposed rule change is available upon request from the Amex or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Allied members are individuals who exercise control over members or member organizations. From time to time, allied members visit the Floor to exercise managerial oversight and to discuss business with their personnel, clients and others. Currently, allied members are not allowed on the Floor unless they are signed-in as visitors. These visitor clearance procedures are inconsistent with the status of allied members at the Exchange and unnecessarily delay the access of allied members to the Floor. To rectify this situation, the Exchange proposes to amend Article IV to provide that allied members may have access to the Trading Floor without the need for clearing the Exchange's security procedures for visitors. Allied members will continue to be prohibited from effecting securities transactions on the Floor, except when effected in compliance with the provisions of Article IV, Section 3, of the Constitution, which provides that, under certain conditions, an approved allied member may be authorized to effect securities transactions as a ''representative'' when (i) a governor who is associated with the allied member is away from the Floor on Exchange business, (ii) an Exchange Official who is associated with the allied member is away from the Floor to attend a meeting of the Amex Board, or (iii) a member who is associated with the allied member is away from the Floor due to the requirements of military service or training.

The Exchange is proposing to establish a formal policy of providing those individuals who were members for more than 20 years before leaving the Floor with gold identification badges allowing them access to the Floor as visitors without going through the sign-in procedures applicable to visitors.[4] Individuals who currently hold gold identification badges, but who have worked less than 20 years as members, would be permitted to keep their badges once the proposed policy is implemented. Going forward, however, an individual must have worked 20 years as a member on the Floor in order to receive the special gold identification badge. Eligible former members may only use their special access privileges for social purposes or to discuss membership leases. In addition, a Floor Official or other officer of the Exchange may terminate the special access privileges of a former member if these are used for purposes other than those expressly permitted, or if a former member disturbs the conduct of business at the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[5] in particular in that its terms are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and since the Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[2] 15 U.S.C. 78s(b)(3)(A).

[3] 17 CFR 240.19b–4(f)(6).

[4] As visitors, former members would remain subject to the Exchange's policies regarding visitors' access to the Floor. Telephone conversation between Bill Floyd-Jones, Assistant General Counsel, Amex, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, on March 29, 2000.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–06 and should be submitted by April 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8323 Filed 4–4–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Cancellation of Meeting

Notice is hereby given of the cancellation of the Minority Business Resource Center Advisory Committee meeting for Tuesday, April 18, 2000, at 10:00 a.m. until 12:00 p.m. in Room 4438–4440 at the Department of Transportation, 400 7th Street, SW., Washington, DC 20590. (Originally announced at Vol. 65, No. 53, FR 14640, March 17, 2000.)

Issued in Washington, DC on March 27, 2000.

Luz A. Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 00–8324 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–62–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–00–002]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: LMRWSAC will meet on Wednesday, April 26, 2000, from 9:00 a.m. to 12 noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 17, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 17, 2000.

ADDRESSES: LMRWSAC will meet in the basement conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Send written material and requests to make oral presentations to M.M. Ledet, Committee Administrator, c/o Commander, Eighth Coast Guard District (m), 501 Magazine Street, New Orleans, LA 70130–3396. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact M.M. Ledet, Committee Administrator, telephone (504) 589–6271, Fax (504) 589–4999.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.

(2) Remarks by RADM P. Pluta, Committee Sponsor.

(3) Approval of the September 8, 1999 minutes.

(4) Old Business:

a. PAWSS update.

b. Soft Dikes Working Group Report.

(5) New Business: Physical Oceanographic Real-Time System (PORTS).

(6) Next meeting.

(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than April 17, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than April 17, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 28 copies to the Committee Administrator at the location indicated under Addresses no later than April 17, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: March 13, 2000.

K.J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 00–8378 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Rotorcraft Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC)

SUMMARY: Notice is given of two new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mark Shilling, Rotorcraft Standards Staff (ASW—119), Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, Texas 76137–4298; phone (817) 222–5110; fax (817) 222–5961 email Mark.R.Schilling@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize the Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendations on the following harmonization tasks:

Task No. 1: Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure

• The project is to be a harmonized Joint Aviation Regulation (JAR)/FAR 27/29 ARAC program.

• Evaluate: the European Association of Aerospace Industries and the Aerospace Industry Association's White Paper, the recommendations contained in the Technical Oversight Group for Aging Aircraft letters to the FAA, and the ongoing activities and results of rotorcraft damage tolerance research and development.

• Identify the information needed to commence rulemaking and define an acceptable means of compliance.

• Recommend appropriate changes to FAR/JAR 29 regarding damage tolerance and fatigue evaluation of metallic structure, and recommend appropriate changes to FAR/JAR 27 that would allow damage tolerance as an option. Any recommended changes should be practical and appropriate to the unique characteristics of rotorcraft. Where feasible and appropriate, provide consistency with FAR/JAR 23/25.

● Evaluate and revise, as appropriate, the following advisory materials: AC 29–2; AC 27–1; and AC 20–95, Fatigue Evaluation of Rotorcraft Structure; and related guidance.

● The recommendation should be forwarded to the Federal Aviation Administration (FAA) and the Joint Aviation Authorities (JAA) in the format of a proposed rule.

Although this tasking for metallic structure does not depend on the completion of the composite structure project, the Composite Rotorcraft Structure and Metallic Rotorcraft Structure working groups should communicate to avoid possibly conflicting recommendation to amend the same regulatory sections.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the recommendation results in one or more notice of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to dispose of any substantive comments the FAA receives.

A progress report should be provided at each Joint Harmonization Working Group meeting. The recommendation should be forwarded to the FAA and the FAA by September 2002.

Task No. 2: Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure

● The project is to be a harmonized FAR/JAR 29/29 ARAC program.

● Revise current FAR/JAR 27 and 29 to add regulations for composite structure. Consider creating a new FAR/FAR 27/29.573 to address composite structure.

● Evaluate and revise, as appropriate, the regulations and the following advisory materials: AC 20–107A, Composite Aircraft Structure; AC 27–1; AC 29–2; and related guidance to achieve the goal of improved tolerance to flaws and defects in composite structure with methodology and procedures which are practical and appropriate to rotorcraft. Where feasible and appropriate, provide consistency with FAR/JAR 23/25.

● The recommendation should be forwarded to the FAA and JAA in the format of a proposed rule.

Although this tasking for composite structure does not depend on the completion of the metallic structure project, the Composite Rotorcraft Structure and Metallic Rotorcraft Structure working groups should communicate to avoid possibly conflicting recommendations to amend the same regulatory sections.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the recommendation results in one or more NPRM's published by the FAA, the FAA may ask ARAC to dispose of any substantive comments the FAA receives.

A progress report should be provided at each Joint Harmonization Working Group meeting. The recommendation should be forwarded to the FAA and JAA by November 2002.

ARAC Acceptance of Task

ARAC has accepted the tasks and has chosen to establish two new working groups, the Composite Rotorcraft Structure working group and the Metallic Rotorcraft Structure working group. The working groups will serve as staff to ARAC to assist ARAC in the completion of the assigned tasks. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepted the working groups' recommendations, ARAC will forward them to the FAA as recommendations.

Working Group Activity

The Composite Rotorcraft Structure working group and the Metallic Rotorcraft Structure working group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working groups are expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the Rotorcraft Issues ARAC meeting held following publication of this notice.

2. Given a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider rotorcraft issues.

Participation in the Working Group

The Composite Rotorcraft Structure working group and the Metallic Rotorcraft Structure working group will be composed of technical experts having an interest in the assigned tasks. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than April 10, 2000. The requests will be reviewed by the

assistant chair and the assistant executive director, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (*e.g.*, attend all meetings, provide written comments when requested to do so, *etc.*). They also will be expected to devote the resources necessary to ensure the working group meets any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the working groups will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on March 28, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–8382 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement; Piedmont Triad International Airport, Greensboro, NC

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Federal Aviation Administration (FAA) will file with the Environmental Protection Agency, and make available to other government and interested private parties, the Draft Environmental Impact Statement (DEIS) for the proposed Runway 5L/23R, a proposed air cargo sorting and distribution facility (FedEx Mid Atlantic Hub), and associated development at Piedmont Triad International Airport, Greensboro, North Carolina. The DEIS will be on file with the EPA and available to the public for review starting April 6, 2000, after 1 p.m. at locations listed under **SUPPLEMENTARY INFORMATION.** A Public Hearing and Information Workshop will be held on May 23, 2000; between the hours of 5:00 p.m. and 8:00 p.m. at the Greensboro Coliseum Exhibit Hall, 1921 W. Lee Street, Greensboro, North Carolina. Written comments on the DEIS will be accepted by the FAA until June 7, 2000, or 45 days after the publication of this Federal Register Notice, whichever is later.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Meyer, Environmental Program Specialist, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Phone (404) 305–7150.

SUPPLEMENTARY INFORMATION: The Piedmont Triad Airport Authority (PTAA), owner and operator of the airport is proposing airside and landside improvements to the Piedmont Triad International Airport. The PTAA's proposed project consists of a new widely spaced Transport Category parallel runway (Runway 5L/23R) that would be 9,000 feet long and 150 feet wide. The runway would be located on the western side of the airport. Other associated projects include the development and operation of an air cargo sorting and distribution facility (FedEx Mid-Atlantic Hub), surface transportation improvements, NAVAIDS for new Runway 5L/23R, property acquisition and relocation of several airport tenant operations. The DEIS has examined the sponsor's proposed project and improvements along with other reasonable alternatives to the proposed project. The Federal Highway Administration (FHWA) is acting as a cooperating agency to the FAA in this DEIS.

A Public Hearing will be held by the FAA to afford interested parties the opportunity to provide their comments on the merits and findings of the DEIS and to consider the economic, social, and environmental effects of PTAA's proposed development and its consistency with the goals and objectives of such urban planning as has been carried out by the community. The Public Hearing will be conducted in conjunction with an informal Information Workshop. During the Information Workshop, participants will be able to view project related materials and speak with representatives of the FAA and the consulting team.

In addition, the public is invited to comment in one of four ways during the Public Hearing/Information Workshop: (1) Written comments may be submitted anytime during the Hearing/Workshop; (2) Pre-addressed written comment forms may be mailed to the Individual listed above, (3) Private oral comments may be given to a certified court reporter anytime during the Hearing/Workshop, and, (4) Oral comments may be made in front of the Hearing Officer who will be present to preside over and conduct the Public Hearing. The FAA encourages interested parties to review the DEIS and provide comments during the public comment period.

For the convenience of interested parties, the DEIS may be reviewed at the following locations:

Greensboro Public Library, 219 No. Church Street, Greensboro
Hege Library of Guilford College, 5800 West Friendly Avenue, Greensboro
High Point Public Library, 901 North Main Street, High Point
Forsyth County Library, 660 West Fifth Street, Winston-Salem
Piedmont Triad International Airport, 6415 Airport Parkway, Greensboro
Federal Aviation Administration, Atlanta District Office, 1701 Columbia Avenue, College Park, Georgia

Dated: Issued in Atlanta, Georgia, March 31, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 00–8383 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Free Flight Steering Committee

Revised Agenda

The April 13 RTCA Free Flight Steering Committee Meeting announced in the **Federal Register**, 65 FR 16240 (Monday, March 27, 2000), third column, has been revised.

The revised agenda reads as follows: The agenda will include: (1) Welcome and Opening Remarks: (a) Recognize Departing Members of the Steering Committee; (b) Welcome Incoming Members. (2) Review Summary of the Previous Meeting; (3) Reports from FAA on: (c) Free Flight Phase 1 Baseline Data and Performance Assessments Update; (d) Controller-Pilot Data Link

Communications (CPDLC) Update; (4) Satellite Navigation Users Group Report; (5) Report and Recommendations from the Free Flight Select Committee; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing Remarks.

Person wishing to obtain further information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or dclarke@rtca.org (e-mail).

Issued in Washington, DC, on March 30, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–8381 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, (601) 664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 29, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 15, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–09–C–00–HSV.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1999.

Proposed charge expiration date: October 31, 2006.

Total estimated PFC revenue: $577,969.

Brief description of proposed project(s): Air Cargo Apron Expansion (Phase 2); Replace Airline Ticket Counters/HVAC Improvements; Terminal Renovations/Baggage Claim Expansion Design; Y2K Upgrades; Security Vehicle (1999); Access/Security Road; Snozzle for Crash Vehicle; Air Carrier Apron Repair; and Two (2) 7.5 KV Runway Regulators.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison County Airport Authority.

Dated: Issued in Jackson, Mississippi on March 29, 2000.

David Shumate,

Acting Manager, Jackson, Mississippi Airports District Office, Southern Region.

[FR Doc. 00–8364 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–4

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (FPC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990, (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, Jr., President of the Metropolitan Nashville Airport Authority at the following address: One Terminal Drive, Suite 501, Nashville, TN 37214–4144.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 3385 Airways Blvd, Suite 302, Memphis, TN 38116–3841, (901) 544–3495 Ext. 16. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 30, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Nashville

Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 21, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–07–C–00–BNA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2002.

Proposed charge expiration date: March 1, 2002.

Total estimated net PFC revenue: $2,094,000.

Brief description of proposed project(s): Air Cargo Ramp.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee on March 30, 2000.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 00–8363 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance and Notice of Public Hearing

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Canadian Pacific Railway

[Docket Number FRA–1999–6139]

The Canadian Pacific Railway (CPR), on behalf of itself and its Delaware and Hudson (D&H) and SOO Line (SOO) subsidiaries, seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.47(a), which requires each car body type road locomotive be equipped with an emergency brake valve adjacent to each end exit door, that these brake pipe valve locations shall be stencilled as ''EMERGENCY BRAKE VALVE'' or shall be identified on adjacent badge plate. CPR seeks this waiver for 25 car body locomotives (Electro-Motive Division SD40–F models, R/N CP 9000–9024) utilized to haul freight, that have never been equipped with an emergency brake valve at the rear exit door. CPR states that they do not believe the emergency brake valve at the rear exit of these locomotives would serve a meaningful purpose since the locomotives are equipped with a rear exterior walkway which is used by crew members during reverse movements, enabling them to signal the locomotive engineer if they see a need for a brake application, and putting the crew member in a position where he could not reach the emergency brake valve, even if it was present.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. In addition, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on Wednesday, April 12, 2000, at DOT Headquarters, located at 400 Seventh Street, SW, Washington, DC, Room 2230. Interested parties are invited to present oral statements at the hearing. This hearing will be held immediately following a hearing being held on another waiver petition filed by CPR (see Docket Number FRA–1999–5894, available for inspection on the Internet at the docket facility's Web site at *http://dms.dot.gov.*)

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversarial proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–1999–6139) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC., 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC, on March 29, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8379 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2000–6944 (Notice No. 00–1)]

Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request approval from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before June 5, 2000.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the Docket Number RSPA–2000–6944 and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' to obtain instructions for

filing the document electronically. In every case, the comment should refer to the Docket number ''RSPA–2000–6944''.

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed at the address above between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at ''http://hazmat.dot.gov.''

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), at the address and telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for extension. The collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels for adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collection requests:

Title: Rail Carriers and Tank Car Tanks Requirements.

OMB Control Number: 2137–0559.

Summary: This information collection consolidates and describes the information collection provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The types of information collected include:

(1) Approvals of the AAR Tank Car Committee: An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) Progress reports: Each owner of a tank car that is required to be modified to meet certain requirements specified in § 173.31(b) must submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) FRA approvals: An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. Also an FRA approval is required for the movement of any tank car that does not conform to the applicable requirements in the HMR. RSPA proposed (September 30 1999; 64 FR 53169) to broaden this provision to include the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law but may safely be moved to a repair location. These latter movements are currently being reported under the information collection for exemption applications.

(4) Manufacturer reports and certificate of construction: These documents are prepared by tank car manufacturers and are used by owners, users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) Quality Assurance Program: Facilities that build, repair and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) Inspection reports: A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Annual Reporting and Recordkeeping: 2,759.

Number of Respondents: 260.

Total Annual Responses: 16,640.

Total Annual Burden Hours: 2,759.

Frequency of Collection: Annually.

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 178 and 180 of the HMR involving the manufacture, qualification, maintenance and use of all specification cargo tank motor vehicles. Also it includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) Registration Statements: Cargo tank manufacturers and repairers and cargo tank motor vehicle assemblers are required to be registered with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The registration statements are used to identify these persons so that DOT can ensure that they have the knowledge and skills necessary to perform the required functions and that they are performing the specified functions in accordance with the applicable regulations.

(2) Requalification and maintenance reports: These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained and are in proper condition

for the transportation of hazardous materials.

(3) Manufacturers' data reports, certificates and related papers: These reports are prepared by cargo tank manufacturers, certifiers and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden: 106,262.

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 106,262.

Frequency of Collection: Periodically.

Title: Rulemaking, Exemption, and Preemption Requirements.

OMB Control Number: 2137–0051.

Summary: This collection of information applies to rulemaking procedures regarding the Hazardous Materials Regulations (HMR). Specific areas covered in this information collection include Part 106, Subpart B, ''Procedures for Adoption of Rules,'' Part 107, subpart B, ''Exemptions,'' Part 107, Subpart C, ''Preemption.'' The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. RSPA is authorized to accept petitions for rulemaking and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) Petitions for Rulemaking: Any person may petition the Associate Administrator for Hazardous Materials Safety to establish, amend, or repeal a substantive regulation, or may petition the Chief Counsel to establish, amend, or repeal a procedural regulation in Parts 106 or 107.

(2) Petitions for Reconsideration: Except as provided in § 106.39(d), any person may petition the Associate Administrator for reconsideration of any regulation issued under Part 106, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under Part 106 and contained in Part 106 or 107.

(3) Application for Exemption: Any person applying for an exemption must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed exemption (e.g., alternative packaging, test procedure or activity), including written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) Application for Preemption Determination: Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply for a determination whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) Waivers of Preemption: With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by RSPA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in Subpart A of Part 106. Applications for exemptions, preemption determinations and waivers of preemption are covered in Subparts B and C of Part 107. Rulemaking procedures enable RSPA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for RSPA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Total Reporting and Recordkeeping Burden: 4,219.

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,219.

Frequency of Collection: Periodically.

Title: Approvals for Hazardous Materials.

OMB No.: 2137–0557.

Summary: This information collection consolidates and describes the information collection provisions in parts 107, 172, 173, 174, 176, and 178 regarding requirements for approvals for hazardous materials in the HMR. Responses to these information collection requirements are required to obtain benefits, such as to become an approval or certification agency or to obtain a variance from packaging or handling requirements based on information provided by the respondent. The types of information collected include: applications to become designated approval agencies, independent cylinder testing agencies, and foreign manufacturers of cylinders; applications for approval of classifications of new explosives; applications for safety determinations to the adequacy of old packagings for materials with special hazards; applications to allow the regulated public to use alternative packagings or test methods; etc.

The information collected is used to:

(1) determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.;

(2) verify that various containers and special loading requirements for vessels meet the requirements of the HMR;

(3) assure that regulated hazardous materials pose no danger to life and property during transportation; and

(4) allow minor variations to regulatory requirements (as specifically authorized by regulation), based on information provided by respondents, without requiring the respondent to apply using less timely and more burdensome exemption procedures.

Affected Public: Businesses and other entities who must meet the approval requirements in the HMR.

Annual Reporting and Recordkeeping: 18,381.

Total Respondents: 3,518.

Total Annual Responses: 3,869.

Total Annual Burden Hours: 18,381.

Frequency of Collection: On occasion.

Issued in Washington, DC on March 30, 2000.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 00–8325 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33854]

Meridian Southern Railway, LLC—Acquisition and Operation Exemption—Line of Kansas City Southern Railway Company

Meridian Southern Railway, LLC (MDS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) Kansas City Southern Railway Company's ownership interest in, and to operate, approximately 54.5 miles of rail line between approximately milepost 134.2 at Meridian, MS, and approximately milepost 79.7 at Waynesboro, MS, in Clarke, Lauderdale and Wayne Counties, MS.[1]

The transaction is expected to be consummated on or after March 31, 2000, the effective date of the exemption (7 days after the exemption was filed).

[1] MDS certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33854, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, NW., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: March 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8237 Filed 4–4–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on May 2, 2000, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: March 29, 2000.

Lee Sachs,

Assistant Secretary, Financial Markets.

[FR Doc. 00–8305 Filed 4–4–00; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Wednesday,
April 5, 2000

Part II

Department of Commerce

Patent and Tradmark Office

37 CFR Parts 1 and 5

Changes To Implement Eighteen-Month Publication of Patent Applications; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 5

[Docket No.: 000308065–0065–01]

RIN 0651–AB05

Changes To Implement Eighteen-Month Publication of Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing changes to the rules of practice in patent cases to implement certain provisions of the ''American Inventors Protection Act of 1999.'' These provisions of the ''American Inventors Protection Act of 1999'' provide, with certain exceptions, for the publication of pending patent applications (other than for a design patent) at eighteen months from the earliest claimed priority date.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before May 22, 2000. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message via the Internet addressed to pregrantpub.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Room 3–C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: *Concerning this notice of proposed rulemaking:* Robert W. Bahr, Karin L. Tyson, or Robert A. Clarke by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

Concerning the electronic filing system (EFS): Jay Lucas or Michael Lewis by electronic mail message via the Internet addressed to jay.lucas@uspto.gov.

SUPPLEMENTARY INFORMATION: The ''American Inventors Protection Act of 1999'' (Title IV of the ''Intellectual Property and Communications Omnibus Reform Act of 1999'' (S. 1948) as introduced in the 106th Congress on November 17, 1999) was incorporated and enacted into law on November 29, 1999, by § 1000(a)(9), Division B, of Public Law 106–113, 113 Stat. 1501 (1999). The ''American Inventors Protection Act of 1999'' contains a number of changes to title 35, United States Code. This notice proposes changes to the rules of practice to implement the provisions of §§ 4501 through 4508 (Subtitle E, Domestic Publication of Patent Applications Published Abroad) of the ''American Inventors Protection Act of 1999.'' These provisions of the ''American Inventors Protection Act of 1999'' provide that, with certain exceptions, applications for patent shall be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code (''eighteen-month publication'').

Section 4502 of the ''American Inventors Protection Act of 1999'' amends 35 U.S.C. 122 (35 U.S.C. 122(b)) to provide that applications for patent shall be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code, and that an application may be published earlier than the end of such eighteen-month period at the request of the applicant. Section 4502 of the ''American Inventors Protection Act of 1999'' (35 U.S.C. 122(b)) also contains a number of exceptions to eighteen-month publication of patent applications.

First: An application shall not be published if it is: (1) no longer pending; (2) subject to a secrecy order under 35 U.S.C. 181 or an application for which publication or disclosure would be detrimental to national security; (3) a provisional application under 35 U.S.C. 111(b); or (4) an application for a design patent under 35 U.S.C. chapter 16. *See* 35 U.S.C. 122(b)(2)(A) and (d).

Second: An application shall not be published if an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires eighteen-month publication. An applicant may rescind such a request at any time. In addition, an applicant who has made such a request but who subsequently files an application directed to the invention disclosed in the application filed in the Office in a foreign country, or under a multilateral international agreement, that requires eighteen-month publication, must notify the Office of such filing within forty-five days after the date of the filing of such foreign or international application. An applicant's failure to timely provide such a notice to the Office will result in abandonment of the application (subject to revival if it is shown that the delay in submitting the notice was unintentional). If an applicant rescinds such a request or notifies the Office that an application was filed in a foreign country or under a multilateral international agreement that requires eighteen-month publication, the application is subject to eighteen-month publication. *See* 35 U.S.C. 122(b)(2)(B)(i)–(iv).

Third: If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office eliminating any part or description of the invention in such application that is not also contained in any of the corresponding applications filed in a foreign country. The Office may only publish the redacted copy of the application unless the redacted copy of the application is not received within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code. *See* 35 U.S.C. 122(b)(2)(B)(v).

Section 4503(a) of the ''American Inventors Protection Act of 1999'' amends 35 U.S.C. 119(b) to provide that no application for patent shall be entitled to a right of priority under 35 U.S.C. 119(a)–(d) unless a claim is filed in the Office, identifying the foreign application by specifying the application number of that foreign application, the intellectual property

authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director. Section 4503(a) of the ''American Inventors Protection Act of 1999'' also amends 35 U.S.C. 119(b) to provide that the Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under 35 U.S.C. 119(b)–(d). Section 4503(a) of the ''American Inventors Protection Act of 1999'' also amends 35 U.S.C. 119(b) to authorize the Director to determine whether to require a certified copy of the original foreign application.

Section 4503(b)(1) of the ''American Inventors Protection Act of 1999'' amends 35 U.S.C. 120 to provide that no application shall be entitled to the benefit of an earlier filed application under 35 U.S.C. 120 unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. Section 4503(b)(1) of the ''American Inventors Protection Act of 1999'' also amends 35 U.S.C. 120 to provide that the Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under 35 U.S.C. 120, and may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under 35 U.S.C. 120.

Section 4503(b)(2) of the ''American Inventors Protection Act of 1999'' amends 35 U.S.C. 119(e) to provide that no application shall be entitled to the benefit of an earlier filed provisional application under 35 U.S.C. 119(e) unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. Section 4503(b)(2) of the ''American Inventors Protection Act of 1999'' also amends 35 U.S.C. 119(e) to provide that the Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under 35 U.S.C. 119(e), and the Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under 35 U.S.C. 119(e) during the pendency of the application.

Case law has indicated that, in certain instances, priority claims may be perfected after issuance. The U.S. Court of Appeals for the District of Columbia has held that the equitable or remedial provisions of 35 U.S.C. 251 authorize patentees to correct or perfect a claim for priority under 35 U.S.C. 119 in an issued patent by reissue. *See Brenner* v. *State of Israel,* 400 F.2d 789, 158 USPQ 584 (D.C. Cir. 1968). The U.S. District Court for the District of Columbia applied this rationale to permit a patentee to amend an intermediate abandoned application in a chain of applications for which a benefit was claimed under 35 U.S.C. 120 to include the specific reference required by 35 U.S.C. 120. *See Sampson* v. *Commissioner,* 195 USPQ 136 (D.D.C. 1976). In appropriate circumstances, the Office has permitted patentees to state claims under 35 U.S.C. 119, 120 or 121 in an issued patent by certificate of correction under 35 U.S.C. 255 and § 1.323. *See In re Schuurs,* 218 USPQ 443 (Comm'r Pat. 1983); *In re Lambrech,* 202 USPQ 620 (Comm'r Pat. 1976); *In re Van Esdonk,* 187 USPQ 671 (Comm'r Pat. 1975).

The amendments to 35 U.S.C. 119 and 120 provide that the Director may consider the failure of the applicant to file a timely claim under 35 U.S.C. 119 or 120 as a waiver of any such claim. Sections 1.55 and 1.78 as proposed implement these amendments to 35 U.S.C. 119 and 120 by specifying time periods during the pendency of the application within which claims under 35 U.S.C. 119(a)–(d), 119(e), and 120 must be stated (or are considered waived). 35 U.S.C. 119(b), 119(e), and 120 each provide that the Director may establish procedures to accept an unintentionally delayed submission of a claim under 35 U.S.C. 119(b), 119(e), or 120 (respectively); however, 35 U.S.C. 119(e) requires that such unintentionally delayed claim (amendment) be submitted during the pendency of the application. Thus, a claim under 35 U.S.C. 119(a)–(d) or 120 for the benefit of a prior application may be added (or corrected) in an issued patent by reissue or certificate of correction (assuming the conditions for reissue or certificate of correction are otherwise met) by submitting such untimely claim under the procedures established in § 1.55 or § 1.78 (including payment of any applicable surcharge). A claim under 35 U.S.C. 119(e) for the benefit of a prior provisional application, however, must be added or corrected during the pendency of the application.

Section 4504 of the ''American Inventors Protection Act of 1999'' amends 35 U.S.C. 154 to provide that, subject to a number of conditions, a patent includes the right to obtain a reasonable royalty during the period beginning on the date of publication of the application for such patent under 35 U.S.C. 122(b) (or the date of publication under Patent Cooperation Treaty (PCT) Article 21(2) of an international application designating the United States) and ending on the date the patent is issued (''provisional rights'').

Section 4505 of the ''American Inventors Protection Act of 1999'' amends 35 U.S.C. 102(e) to, *inter alia,* set forth the conditions under which an application published under 35 U.S.C. 122(b) or under PCT Article 21(2) is prior art as of its filing date.

Section 4506 of the ''American Inventors Protection Act of 1999'' provides that the Office shall recover the cost of early publication required by 35 U.S.C. 122(b) by charging a separate publication fee after a notice of allowance is given under 35 U.S.C. 151.

Section 4508 of the ''American Inventors Protection Act of 1999'' provides that its eighteen-month publication provisions take effect on November 29, 2000, and apply to applications (other than for a design patent) filed under 35 U.S.C. 111(a) on or after November 29, 2000, and to applications in compliance with 35 U.S.C. 371 that resulted from international applications filed under 35 U.S.C. 363 on or after November 29, 2000.

In August of 1995, the Office published a notice of proposed rulemaking to implement legislation pending before the 104th Congress that (if enacted) would have provided for the eighteen-month publication of pending patent applications. *See Changes to Implement 18-Month Publication of Patent Applications,* Notice of Proposed Rulemaking, 60 FR 42352 (August 15, 1995), 1177 *Off. Gaz. Pat. Office* 61 (August 15, 1995). The Office is now publishing a notice of proposed rulemaking, rather than simply adopting changes based upon the notice of proposed rulemaking published in 1995, because: (1) The eighteen-month publication provisions of the ''American Inventors Protection Act of 1999'' are different from those pending before the 104th Congress; and (2) the Office's planning approach to implementing eighteen-month publication is different from its 1995 planning approach. The Office's current planning approach to eighteen-month publication includes: (1) Disseminating a publication document (patent application publication) for each published application; and (2) providing (under conditions set forth below) any member of the public with access to the file wrapper and contents of each published application (which may be limited to a

copy of the file wrapper and contents of the application).

Patent application publication: The patent application publication will include a front page containing information similar to that contained on the front page of a patent, and the drawings (if any) and specification (including claims) of the published application. To create the patent application publication, the Office plans to use its Patent Application Capture and Review (PACR) system to create an electronic database (PACR database) containing: (1) The application papers and drawings deposited on the filing date of the application; and (2) any subsequently filed application papers and drawings needed to create the patent application publication. The application information contained in the Office's PACR database will be used to create the patent application publication, unless the applicant provides a copy of the application via the Office's electronic filing system (EFS) to be used to create the patent application publication (discussed below).

The Office currently uses the PACR database as the Office's record of the application papers submitted on the filing date of the application (*i.e.,* the original disclosure of the invention). The application papers submitted on the filing date of the application, however, may not include the content needed (*e.g.,* an abstract), and the application papers or drawings may not be of sufficient quality (*e.g.,* papers not having sufficient contrast to permit electronic capture by digital imaging and conversion to text by optical character recognition or drawings not having sufficient quality) to be used, to create a patent application publication. Since the patent application publication will be a prior art document (and, in most cases, the prior art document having the earliest effective date under 35 U.S.C. 102(a), (b), and (e)), the Office must consider the usability of the patent application publication as a prior art document when determining what drawing quality is needed to create the patent application publication.

If the application papers submitted on the filing date of the application do not include the content needed, or the application papers or drawings are not of sufficient quality to be used, to create a patent application publication, the Office of Initial Patent Examination (OIPE) will issue a notice requiring that the applicant submit the needed application content, or application papers or drawings of sufficient quality, for use in creating a patent application publication. The applicant's reply to that notice (application papers and drawings needed to create the patent application publication) will then be added to the PACR database. The Office must separate the application papers and drawings deposited on the filing date of the application and the subsequently filed application papers and drawings in its PACR database because the PACR database is also used to create any requested certified copy of the application (which may only include the application papers and drawings deposited on the filing date of the application).

Initially, an application filed under 35 U.S.C. 111(a) (nonprovisional) must be entitled to a filing date (*i.e.,* contains a written description of the invention, a drawing (if necessary for an understanding of the invention), and at least one claim) for the application to be in condition for publication. In addition, if an application filed under 35 U.S.C. 111(a) otherwise entitled to a filing date appears to omit a portion of the description or a drawing figure, the omitted portion of the description or drawing figure(s) must be supplied, or the period for supplying such portion of the description or drawing figure(s) must have expired, for the application to be in condition for publication. The requirements for an application filed under 35 U.S.C. 111(a) to be entitled to a filing date and the treatment of an application filed under 35 U.S.C. 111(a) that appears to omit a portion of the description or a drawing figure is set forth in sections 601.01(d) through 601.01(g) of the *Manual of Patent Examining Procedure* (7th ed. 1998) (MPEP).

In addition, an application filed under 35 U.S.C. 111(a) must include an executed oath or declaration (§ 1.63), an abstract (§ 1.72(b)), and an English translation (if filed in a language other than English), for the application to have the content necessary to create the patent application publication. For eighteen-month publication purposes, the oath or declaration must at a minimum: (1) Name each inventor at least by a family and given name; and (2) be signed by each inventor or a party qualified to sign under §§ 1.42, 1.43, or 1.47 in compliance with § 1.64. Finally, an application filed under 35 U.S.C. 111(a) will not be published until the basic filing fee (§ 1.16(a) or (g)) is paid.

A PCT international application must satisfy the requirements of 35 U.S.C. 371 to be subject to eighteen-month publication under 35 U.S.C. 122(b) (and to have the content necessary to create the patent application publication).

Even if an application has the content necessary to create the patent application publication, the application papers and drawings must also be reviewed to determine whether they are of sufficient quality to be used in creating the patent application publication. To be of sufficient quality to create the patent application publication, the specification must be on sheets of paper that: (1) Are flexible, strong, smooth, non-shiny, durable, and white; (2) are either A4 (21 cm x 29.7 cm) or 8½″ x 11″ with each sheet having a left margin of at least 2.5 cm (1″) and top, bottom and right margins of at least 2.0 cm (¾″); (3) are written on one side only in portrait orientation; (4) are plainly and legibly written either by a typewriter or machine printer in permanent dark ink or its equivalent; (5) have lines that are either 1½ or double-spaced; and (6) have sufficient clarity and contrast between the paper and the writing on the paper to permit direct reproduction and electronic capture by digital imaging and optical character recognition. These quality standards and requirements are currently set forth in § 1.52(a) and (b). In addition, the title must meet the character type and length requirements of § 1.72(a); the abstract must commence on a separate sheet and meet the word-length requirement of § 1.72(b); the claims must commence on a separate sheet; and the sequence listing (if applicable) must comply with §§ 1.821 through 1.825.

As discussed above, the Office must consider not only whether drawings are of sufficient quality to create a publication (the patent application publication), but whether they are sufficient for the publication to be routinely used as a prior art document. Thus, the drawing sheets (if drawings are included) must comply with the following requirements of § 1.84. Drawings must be done in dark ink (not pencil), except where color drawings or photographs are permitted. Photographs (or photomicrographs) are not permitted unless they are reproducible and the invention cannot be clearly illustrated in an ink drawing. *See Interim Waiver of 37 C.F.R. § 1.84(b)(1) for Petitions to Accept Black and White Photographs and Advance Notice of Change to M.P.E.P. § 608.02,* Notice, 1213 *Off. Gaz. Pat. Office* 108 (August 4, 1998). Drawing sheets must be reasonably free from erasures and must be free from alterations, overwritings, interlineations, folds, and copy marks. Drawing sheets must be either 21.0 cm by 29.7 cm (DIN size A4) or 21.6 cm by 27.9 cm (8½ by 11 inches). Each drawing sheet must include a top margin of at least 2.5 cm (1 inch), a left side margin of at least 2.5 cm (1 inch),

a right side margin of at least 1.5 cm (5/8 inch), and a bottom margin of at least 1.0 cm (3/8 inch). Lines, numbers, and letters must be clean, dark (not of poor line quality), uniformly thick, and well defined. The English alphabet must be used for letters, except where another alphabet is customarily used (such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas). Numbers, letters, and reference characters must measure at least 0.32 cm (1/8 inch) in height. Lead lines are required for each reference character (except for those which indicate the surface or cross section on which they are placed, in which case the reference character must be underlined to make it clear that a lead line has not been left out by mistake). Finally, drawing views must be numbered in consecutive Arabic numerals, starting with 1.

In September of 1996, the Office revised the standard and format requirements for the specification (including the abstract and claims), drawings, and other application papers set forth in § 1.52 and § 1.84 for the purpose of obtaining initial application papers in condition for eighteen-month publication. *See Miscellaneous Changes in Patent Practice,* Final Rule Notice, 61 FR 42790 (August 19, 1996), 1190 *Off. Gaz. Pat. Office* 67 (September 17, 1996). Applicants are advised that the Office will: (1) Begin more rigorous enforcement of the provisions of § 1.52(a) and (b) and § 1.84; and (2) no longer permit applicants to request that objections under § 1.84 be held in abeyance pending allowance of the application.

As discussed below, if applicant timely provides the Office with a copy of the application via the Patent and Trademark Office electronic filing system, the Office will use the electronic copy provided by the applicant (rather than the PACR database records) to create the patent application publication. Applicants may use this procedure to obtain inclusion of amendments submitted during prosecution in the patent application publication. Applicants must use this procedure when requesting: (1) Voluntary publication of an application; (2) republication of a previously published application; or (3) publication of only a redacted copy of an application.

The electronic filing system (EFS) is an electronic system for the submission of patent applications to the Office. The EFS encompasses the preparation of the application parts in a special manner on the applicant's computer (authoring), the assembling of the pieces of the application so authored, and the secure communication of that application to the Office.

The EFS is currently in place as a pilot program for use by a limited number of applicants, who on a voluntary basis, file applications under the EFS program. The same EFS software must be used by applicants who wish to submit a copy of the application for the patent application publication.

The steps for submission of an electronic version of a patent application are as follows: (1) Obtaining a digital certificate; (2) obtaining the authoring and the submission software packages from the Office; (3) authoring the patent application; and (4) assembling the parts of the application, and validating, digitally signing, and submitting the application.

To file a copy of an application using the EFS, an applicant (or representative) must submit a request and receive an Office digital certificate to enable secure communication between the applicant and the Office. A digital certificate will allow the authorized person to conduct electronic filing, as well as have access to the Office's Patent Application Information Retrieval (PAIR) software to display patent application status information.

The digital certificate is given to individuals and firms that obtain a customer number, and also request the digital certificate. Instructions on how to obtain the necessary digital certificate are located at the Office's Electronic Business Center on the Office's Internet Web site (http://www.uspto.gov) (under the section Electronic Business Center, select New User for the PAIR system).

The Office makes its branded version of the security software product called Entrust Direct software available to authorized persons. The software operates in conjunction with an Office Public Key Infrastructure (PKI) that is secure and enables communication only between authorized persons who are registered with the Office and the Office.

A person signing up for EFS application filing receives a package with his or her digital certificate including: (1) The software that will attach a digital signature to a document or set of documents; (2) an authoring tool that will allow the applicant to convert a standard patent application into a specialized format; and (3) the electronic Packaging and Validation Engine (ePave) program that will assemble the parts of the application, validate that the parts are complete, encrypt and digitally sign them, and then send them to the Office.

The applicant is responsible for correctly authoring the electronic application, which is defined as reformatting the application into a form that complies with the requirements of XML (the standard eXtensible Markup Language of Internet authoring). The XML requires that all the pieces of information in the application (*e.g.,* the inventor's name, title of the invention, the claims) are tagged with standard XML named tags before and after each piece of information. For example, XML could require that the title be tagged:

MAKING A WIDGIT

The tagged information, in turn, is ordered and positioned on the submitted document according to the formula for that document in the document type definition (DTD). The DTD contains a list of all the tagged data elements (pieces of information) that should be on that document, and the relative positioning of the elements. When combined with the document's style sheet (which contains formatting information), the DTD will completely define what the document should contain and, when printed or viewed, what it will look like.

The applicant does the authoring using the software authoring tool given to him or her by the Office and operating on the applicant's computer. The authoring tool displays on the left of the applicant's computer screen a list of all of the data elements that should be in a patent application (according to the Office's DTD). The applicant clicks each element in the list, and when a window opens, types the information requested into the window. For example, the applicant clicks the data element ''TITLE'' and types ''MAKING A WIDGIT'' when the window opens. The authoring tool will add the tags, paragraph numbers, and other elements that are required by XML. The applicant can continue through this whole process adding the required information to each of the data elements until the application is fully authored.

The applicant can also use the authoring tool to ''cut and paste'' a fully written application into the proper format. In this mode, the applicant will open up that written application, and also open up the authoring tool to reveal all of the data elements. When the applicant clicks the data element to reveal the data entry window, the applicant will copy the relevant section from the previously written application and paste that section into the window (for tagging by the authoring tool).

Paper copies of the oath or declaration (§ 1.63), drawings, and certain other documents are scanned on the applicant's digital scanner and stored in tagged image file format (TIFF). The TIFF is not tagged by the authoring tool, but is similar to an electronic photograph.

Using either mode, the applicant will produce a copy of the application in compliance with the Office EFS, including a specification and claims (in XML), an oath or declaration (in TIFF), and drawings (also in TIFF).

Once the various parts of the application are prepared, the applicant will use the software tool ePave to assemble those parts and submit the application to the Office. The ePave software interacts with the applicant to fill out an electronic transmittal and fee information letter. This document is developed in the tagged XML format. The applicant then uses the ePave software to associate these documents with the previously produced application.

This association of the related files to be submitted is called bundling. The bundle of files that will be sent to the Office will be compressed using Zip technology to reduce their size. Then ePave will apply the digital signature to the compressed bundle, to both indicate who is sending the package to the Office and to check the file's integrity. The digital signature process also encrypts the bundle, for safety during transmission.

Obviously, fees submitted via EFS must be by an authorization to charge the fee to a credit card or Office deposit account. Therefore, any publication fee or processing fee required for a copy of an application submitted via EFS for use in the patent application publication must be by an authorization to charge the fee to a credit card or Office deposit account.

The authoring tool and ePave software on the applicant's computer perform all of this activity almost invisibly. The applicant must enter a password to apply the digital signature, and the software will finish processing the application for submission to the Office. During the processing of a copy of an application for submission to the Office for use in a patent application publication, the applicant will be advised that the application of a digital signature constitutes a statement that the EFS copy of the application contains no new matter, and, except for a redacted copy of an application (which requires the concurrent submission of other certifications on paper), that the EFS copy of the application corresponds to the application as amended by any amendment filed in the application. When processing is finished, the software will ask the applicant if the list of displayed files should be sent to the Office. The applicant will click or otherwise express his or her concurrence, and the EFS application files are electronically transmitted to the Office.

On receipt of the bundle of files comprising the application, the Office stores the bundle and takes it apart. The bundle is decrypted, the digital signature is checked, and the integrity of the package is confirmed. In the course of events, the Office sends an acknowledgment back to the applicant's computer listing the date and time of submission, the names and sizes of the files received, and other information to confirm the submission.

If a copy of an application being submitted to the Office for eighteen-month publication purposes contains a sequence listing, and the sequence listing is identical to a sequence listing previously submitted to the Office (*e.g.,* the sequence listing is not amended or redacted) in compliance with §§ 1.821 through 1.825, the EFS copy of the application may contain a reference to the previously filed sequence listing in lieu of a copy of the previously filed sequence listing.

Finally, EFS is currently a pilot program. The Office anticipates that EFS will be capable of receiving copies of applications for eighteen-month publication purposes on a routine basis by November 29, 2000. In the event that EFS is not capable of receiving copies of applications for eighteen-month publication purposes on a routine basis by November 29, 2000, the Office will provide for submission by paper of copies of applications for applicants requesting: (1) A patent application publication reflecting amendments to the application; (2) voluntary publication of an application; (3) republication of a previously published application; or (4) publication of only a redacted copy of an application.

Publication process: The current planning approach involves a fourteen-week publication cycle that results in the publication of patent application publications on Thursday of each week. Ideally, the publication date of an application will be the first Thursday after the date that is eighteen months after the filing date of the application, or if the application claims the benefit of an earlier filing date, the first Thursday after the date that is eighteen months after the earliest filing date for which a benefit is sought. An application, however, may not be published the first Thursday after the date that is eighteen months after the earliest filing date for which a benefit is sought if the application is not in condition for publication approximately fourteen months after the earliest filing date for which a benefit is sought (eighteen months less the fourteen-week publication cycle).

Obviously, there are events that will delay publication of some applications until a later date: *e.g.,* (1) the application claims the benefit under 35 U.S.C. 120 of an application filed more than eighteen months before the actual filing date of the application; (2) the basic filing fee or oath (or declaration) is not provided within eighteen months after the earliest filing date for which a benefit is sought; or (3) the application does not contain papers or drawings of publication quality within eighteen months after the earliest filing date for which a benefit is sought. In such situations, the publication date of an application will be the first Thursday after the date that is fourteen weeks after the application is in condition for publication. Applicants who attempt to delay publication by intentionally delaying the submission of the application content necessary for publication, however, will encounter a reduction (under regulations established pursuant to 35 U.S.C. 154(b)(2)(C)(iii)) in any patent term adjustment under 35 U.S.C. 154(b).

The Office plans to indicate a projected publication date on the filing receipt or indicate ''to be determined'' if the application is not in condition for publication. If events change the projected publication date by more than two weeks (*e.g.,* claim for priority under 35 U.S.C. 119(e) presented after mailing of the filing receipt) or the application content necessary for publication is provided, the Office will issue a change notification indicating the revised projected publication date.

The publication process involves producing weekly volumes of patent application publications on a variety of media: *e.g.,* the Office's Examiner Automated Search Tool (EAST) and Web-based Examiner Search Tool (WEST) search systems, optical disk products for sale to the public, and exchange with the Office's Intellectual Property exchange partners. Patent application publications will be available for viewing by the public in the Public Search Room via an on-line search system. The Office does not plan to provide paper copies of the patent application publications for placement in either the Public Search Room or the examiners' search rooms. The Office, however, will provide paper copies of the patent application publications to

any member of the public on request (for a fee) in the manner that paper copies of patents are currently provided.

The publication process provides for: (1) Assembly of application bibliographic information for the patent application publication at fourteen weeks prior to the projected publication date; (2) assembly of the technical content (specification, including claims and abstract, and drawings) of the application for the patent application publication at nine weeks prior to the projected publication date; and (3) placing the application information as assembled into the patent application publication on publication media (*e.g.,* optical disks, magnetic tape) at four weeks prior to the projected publication date.

Any applicant seeking to abandon the application for the purpose of avoiding publication must take appropriate action (see § 1.138 discussed below) well prior to the projected publication date. If the application is not expressly abandoned at least four weeks prior to the projected publication date, the Office will probably not be able to avoid publication of the application or at least some application information because the Office will place the application (along with the thousands of other applications being published each week) on publication media (*e.g.,* optical disks, magnetic tape) four weeks prior to the projected date. This does not imply that a request to expressly abandon an application to avoid publication (§ 1.138) filed prior to this ''four-week'' time frame will ensure that the Office will be able to remove an application from publication. The Office simply cannot ensure that it can remove an application from publication or avoid publication of application information any time after the publication process for the application is initiated.

Access to the file wrapper and contents of a published application: The Office plans to permit: (1) Any member of the public to obtain (for a fee) a copy of the complete file wrapper and contents of, or a copy of a specific paper in, any published application, provided that no redacted copy was timely submitted for publication; (2) any member of the public to obtain (for a fee) an appropriately redacted copy of the file wrapper and contents of, or a copy of a specific paper in, any published application for which a redacted copy was timely submitted for publication; and (3) any member of the public to physically inspect (under the conditions that inspection of patented files is permitted) the file of any abandoned published application, provided that no redacted copy was timely submitted for publication.

Any member of the public may obtain status information concerning any published application via the Office's PAIR system. Permitting physical inspection of pending published applications, however, would interfere with the Office's ability to act on the applications within the time frames set forth in 35 U.S.C. 154(b)(1)(A) and (B). Thus, the Office must limit public access to the file wrapper of pending published applications to obtaining a copy produced by the Office (for a fee) to avoid conferring patent term adjustment on the applicant due to actions by members of the public.

Section 4805 of the ''American Inventors Protection Act of 1999'' provides that the Comptroller General (in consultation with the Office) shall conduct a study and submit a report to Congress on the potential risks to the United States biotechnology industry relating to biological deposits in support of biotechnology patents, and that the Office shall consider the recommendations of such study in drafting regulations affecting biological deposits (including any modification of § 1.801 *et seq.*). Therefore, this notice does not contain any proposed amendment to § 1.801 *et seq.* concerning the treatment of biological deposits in applications subject to eighteen-month publication.

The term ''Commissioner'' wherever it is present in the rules of practice affected by this notice is proposed to be changed to ''Director'' for consistency with § 4732 of the ''American Inventors Protection Act of 1999.'' The provisions of the rules of practice not involved in this notice will be revised for consistency with § 4732 of the ''American Inventors Protection Act of 1999'' in due course.

Finally, the Office proposed a number of changes to the rules of practice in a rulemaking to support the Patent Business Goals. *See Changes to Implement the Patent Business Goals,* Notice of Proposed Rulemaking, 64 FR 53772 (October 4, 1999), 1228 *Off. Gaz. Pat. Office* 15 (November 2, 1999). The Office indicated in the Patent Business Goals Notice of Proposed Rulemaking that it would have to reconsider its business processes and make such further changes to the rules of practice as are necessary in the event of enactment of patent legislation. *See Id.* Sections 1.9, 1.14, 1.17, 1.55, 1.72, 1.78, 1.89, 1.131, 1.132, 1.137, 1.138, 1.311, and 5.1 as proposed to be amended in this notice also reflect changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1 and 5, are proposed to be amended as follows:

Section 1.9: Section 1.9(c) is proposed to be amended to define a published application as used in 37 CFR chapter I to mean an application for patent which has been published under 35 U.S.C. 122(b).

Section 1.9 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.11: Section 1.11(a) is proposed to be amended to include the file of an abandoned published application (except if a redacted copy of the application was used for the patent application publication) among the files that are open to inspection by the public.

Section 1.12: Section 1.12(a)(1) is proposed to be amended to include the assignment records of a published patent application among the patent assignment records that are available to the public. Section 1.12(b) is proposed to be amended to provide the patent assignment records, digests, and indexes that are available to the public unless they relate to pending or abandoned patent applications that have not been published under 35 U.S.C. 122(b).

Section 1.13: Section 1.13 is proposed to be amended to include patent application publications among the records of the United States Patent and Trademark Office that are open to the public, and of which a copy (certified or uncertified) will be furnished (upon payment of the fee therefor).

Section 1.14: Section 1.14(a) is proposed to be amended to generally maintain the confidentiality of applications that have not been published as a U.S. patent application publication (*see* 35 U.S.C. 122(b)) pursuant to 35 U.S.C. 122(a). Status information is defined to include identification of whether the application has been published under 35 U.S.C. 122(b), as well as whether the application is pending, abandoned, or patented, and the application numerical identifier.

Section 1.14(b) is proposed to be amended to provide that status information may also be supplied when the application is referred to by its numerical identifier in a U.S. patent application publication as well as a U.S. patent or a published international application. Section 1.14(b) is also proposed to be amended to provide that status information may be supplied for an application which claims the benefit of the filing date of an application for which status information may be

supplied. As a result, the public will be able to obtain continuity data for applications that have been published as a U.S. patent application publication or as a U.S. patent.

Section 1.14(c)(1) as proposed provides that a copy of an application-as-filed or a file wrapper and contents may be supplied where the appropriate fee is paid, and: (1) the application is incorporated by reference in a U.S. patent application publication or U.S. patent; or (2) the application is relied upon for priority under 35 U.S.C. 119(e) or 120 in a U.S. patent application publication or U.S. patent.

Section 1.14(c)(2) as proposed provides that copies of the file wrapper and contents of an application are available to the public when the application has been published as a U.S. patent application publication.

Section 1.14(e) is proposed to be amended to provide public access to an abandoned application that is referenced in a U.S. patent application publication as well as a U.S. patent, or another application that is open to public inspection.

Section 1.14(i) is proposed to provide for greater access to international application files kept by the Office. Specifically, 35 U.S.C. 374 equates the publication under the PCT of an international application designating the U.S. to the publication of a U.S. application under 35 U.S.C. 122(b). As a result of the publication under 35 U.S.C. 122(b) of applications having an international filing date on or after November 29, 2000, the Office will make available copies of the application files and also allow for access to those files in accordance with § 1.14(c) and (e), respectively. Therefore, after publication of an international application having an international filing date on or after November 29, 2000, and designating the U.S. under PCT Article 21, the Office will make available copies of, and allow access to, those international application files which are kept in the Office (the Home, Search, and Examination Copies) to the extent permitted under the PCT. Additionally, § 1.14(i)(2) provides that copies of English language translations of international applications, which were published in a non-English language and which designated the U.S., and which have been submitted to the Office pursuant to 35 U.S.C. 154(d)(4), will also be available to the public. Requests for copies of, or access to, an application file under § 1.14(i) must be in the form of a written request and must include a showing that the international application has been published and that the U.S. was designated. Such a showing should preferably be in the form of the submission of a copy of the front page of the published international application. Additionally, requests for copies of international application files must also be accompanied by the appropriate fee.

Section 1.14(j) is proposed to be amended to provide that this section not only applies when the Office provides access to or copies of the application, but also when the Office provides access to or copies of part of an application.

Section 1.14 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.17: Section 1.17(h) is proposed to be amended to include a petition under § 1.138 to expressly abandon an application to avoid publication among the petitions requiring the fee ($130) set forth in § 1.17(h).

Section 1.17(i) is proposed to be amended to include processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication (§ 1.217), a request for voluntary publication or republication of an application (§ 1.221), and for processing a belated submission under § 1.99 (§ 1.99(e)) to the processing services requiring the processing fee ($130) set forth in § 1.17(i).

Sections 1.17(l) and 1.17(m) (and the heading of § 1.17) are proposed to be amended to set forth the fees for filing a petition under § 1.137 for revival of a terminated reexamination proceeding (on the basis of unavoidable and unintentional delay), and are discussed in a separate rulemaking (to implement the optional *inter partes* reexamination provisions of the ''American Inventors Protection Act of 1999'').

Section 1.17(p) is proposed to be amended to make its fee ($240) applicable to a third party submission under § 1.99, as well as an information disclosure statement under § 1.97(c) or (d).

Section 1.17(u) is proposed to be added to set forth the surcharge ($1,210) for accepting an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (§§ 1.55 and 1.78).

Section 1.17 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.18: Section 1.18(d) is proposed to be added to specify the publication fee ($300). In view of this proposed addition to § 1.18, the heading of § 1.18 is also proposed to be amended to refer to ''post-allowance (including issue) fees'' (instead of only ''issue fees'').

Section 1.24: Section 1.24 is proposed to be removed and reserved. The practice of using coupons to purchase patents, statutory invention registrations, trademark registrations, *etc.,* is inefficient as compared to alternatives such as payment by credit card (especially for orders placed via the Internet). Coupons sold by the Office (before coupon practice is abolished) may still be used but cannot be redeemed.

Section 1.52: Section 1.52(d) is proposed to be amended to provide for nonprovisional applications and provisional applications filed in a language other than English. The treatment of nonprovisional applications filed in a language other than English are revised for clarity, but otherwise remain unchanged (§ 1.52(d)(1)).

Section 1.52(d)(2) as proposed provides that if a provisional application is filed in a language other than English, an English translation will not be required in the provisional application. Section 1.52(d)(2) as proposed also contains a reference to § 1.78(a) concerning the requirements for claiming the benefit of the filing date of such a provisional application in a later filed nonprovisional application.

Section 1.55: Section 1.55 is proposed to be amended to implement the provisions of 35 U.S.C. 119(b) as amended by § 4503(a) of the ''American Inventors Protection Act of 1999,'' by providing: (1) a time period within which a claim for the benefit of a prior foreign application must be stated or waived; and (2) provisions for the acceptance of an unintentionally delayed submission of a claim to the benefit of a prior foreign application.

Section 1.55(a) is proposed to be amended to provide that: (1) in an original application filed under 35 U.S.C. 111(a) (other than a design application), the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application; (2) in an application that entered the national stage from an international application after compliance with 35 U.S.C. 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT; and (3) the claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed before the patent is granted.

Section 1.55(c) is proposed to provide that any claim for priority under 35 U.S.C. 119(a)–(d), or 365(a) or (b) not presented within the time period provided by § 1.55(a) is considered to have been waived. Section 1.55(c) as proposed also provides that if a claim to priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) is presented after the time period provided by § 1.55(a), the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country, and the day, month and year of its filing was unintentionally delayed. Section 1.55(c) as proposed also provides that a petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) must be accompanied by: (1) The surcharge set forth in § 1.17(u); and (2) a statement that the entire delay between the date the claim was due under § 1.55(a)(1) and the date the claim was filed was unintentional, and that the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.55 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.72: Section 1.72(a) is proposed to be amended to provide that the title of the invention may include only characters capable of being created by a keyboard and may not exceed 500 characters in length. The title character type and number limitations are necessary to ensure that the title can be completely and accurately captured in the Office's Patent Application Locating and Monitoring (PALM) system. Section 1.72 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.78: Section 1.78(a) is proposed to be amended to implement the provisions of 35 U.S.C. 119(e) and 120 as amended by § 4503(b) of the ''American Inventors Protection Act of 1999,'' by providing: (1) A time period within which a claim to the benefit of a prior nonprovisional or provisional application must be stated or waived; and (2) provisions for the acceptance of the unintentionally delayed submission of a claim to the benefit of a prior nonprovisional or provisional application.

Section 1.78(a)(2) is proposed to be amended to provide that (except for a continued prosecution application filed under § 1.53(d)) any claim to the benefit of a nonprovisional application or international application must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. Section 1.78(a)(2) as proposed also provides that the failure to timely submit the reference required by 35 U.S.C. 120 and § 1.78(a)(2) is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application, but that the time period set forth in § 1.78(a)(2) does not apply to an application for a design patent.

Section 1.78(a)(2) also provides that if the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (regardless of whether benefit to such application is claimed in the application data sheet).

Sections 1.78(a)(3) and 1.78(a)(4) are proposed to be redesignated as §§ 1.78(a)(4) and 1.78(a)(5), respectively.

Section 1.78(a)(3) as proposed provides that if the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by § 1.78(a)(2), the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed copending nonprovisional application or international application designating the United States may be accepted if the claim identifying the prior application by application number or international application number and international filing date was unintentionally delayed. Section 1.78(a)(3) as proposed also provides that a petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed copending application must be accompanied by: (1) The surcharge set forth in § 1.17(u); and (2) a statement that the entire delay between the date the claim was due under § 1.78(a)(2) and the date the claim was filed was unintentional, but the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.78(a)(4) is proposed to be amended to provide that, for a nonprovisional application to claim the benefit of a provisional application, the provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(k) must be paid within the time period set forth in § 1.53(g).

Section 1.78(a)(5) as proposed provides that any nonprovisional application claiming the benefit of a provisional application filed in a language other than English must (in addition to the reference required by 35 U.S.C. 119(e) and proposed § 1.78(a)(5)) contain an English language translation of the non-English language provisional application and a statement that the translation is accurate. Section 1.78(a)(5) as proposed also provides any claim for the benefit of a provisional application and English language translation of a non-English language provisional application must be submitted during the pendency of the nonprovisional application, and within the later of four months from the actual filing date of the nonprovisional application or sixteen months from the filing date of the prior provisional application. Section 1.78(a)(5) as proposed also provides that the failure to timely submit the reference and English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and § 1.78(a)(5) is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior provisional application.

Section 1.78(a)(6) as proposed provides that if the reference or English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and § 1.78(a)(5) is presented in a nonprovisional application after the time period provided by § 1.78(a)(5), the claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application may be accepted during the pendency of the nonprovisional application if the claim identifying the prior application by provisional application number and any English language translation of a non-English language provisional application were unintentionally delayed. Section 1.78(a)(6) as proposed also provides that a petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application must be accompanied by: (1) The surcharge set forth in § 1.17(u); and (2) a statement that the entire delay between the date the claim was due under § 1.78(a)(5) and the date the claim was filed was unintentional, but that the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.78 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.84: Section 1.84(a)(2) as proposed is amended to provide that color drawings are not permitted in an application, or copy thereof, submitted under the Office electronic filing system. Section 1.84(a)(2) as proposed is also amended to provide that any petition to accept color drawings must include a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing. Since § 1.84(b)

provides that color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied, the provisions and restrictions in amended § 1.84(a)(2) would also apply to color photographs.

Section 1.84(e) is proposed to be amended to provide that photographs must be developed on paper meeting the sheet-size requirements of § 1.84(f) and the margin requirements of § 1.84(g).

Section 1.84(j) is proposed to be amended to refer to the view suitable for the front page, rather than the view suitable for the *Official Gazette,* since the front page of the patent (and patent application publication) includes the information that is (or would be) included in the *Official Gazette,* and the Office does not plan on creating an *Official Gazette* for patent application publications. Section 1.84(j) is also proposed to be amended to provide that: (1) One of the views should be suitable for inclusion on the front page of the patent application publication and patent as the illustration of the invention; and (2) applicant may suggest a single view (by figure number) for inclusion on the front page of the patent application publication and patent. Applicants should indicate in the application transmittal letter the figure number of the view suggested for inclusion on the front page of the patent application publication and patent. The Office, however, is not bound by applicant's suggestion.

Section 1.85: Section 1.85(a) is proposed to be amended to provide that a utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected. As discussed above, these objections will concern deficiencies that must be corrected for the drawings to be of sufficient quality for use in creating a patent application publication. Since the Office plans to use the copy of the application (including the drawings) from its PACR database to create the patent application publication, the Office must require that new or corrected drawings correcting the objections to the drawings be filed before the application is released from OIPE and placed on the files for examination.

Even if an applicant files the application with a request that the application not be published pursuant to 35 U.S.C. 122(b), the applicant may rescind that request at any time. *See* 35 U.S.C. 122(b)(2)(B)(ii). In addition, at the time the Office is recording a copy of the application in its PACR database, the Office is not in a position to know whether the applicant will file an electronic filing system copy of the application for use creating the patent application publication. Therefore, the Office must be prepared to create a patent application publication from its PACR database for each application and insist that objections to the drawings be corrected in all utility and plant applications before the application can be released from OIPE.

Section 1.85(a) is also proposed to be amended to provide that (except as provided in § 1.215(c)), any patent application publication will not include drawings filed after the application has been placed on the files for examination. Thus, corrected drawings submitted after the application has been released from OIPE will not be added to the PACR database or used to create the patent application publication.

Section 1.85(a) is also proposed to be amended to provide that, unless applicant is otherwise notified in an Office action, objections to the drawings in a utility or plant application will not be held in abeyance, and a request to hold objections to the drawings in abeyance will not be considered a *bona fide* attempt to advance the application to final action (§ 1.135(c)). That is, if an Office action or notice contains an objection to the drawings (and does not expressly permit such objection to be held in abeyance) and the applicant's reply does not correct the objection, the applicant will be advised that the reply is non-responsive and given the remainder of the period set in the original Office action or notice (and not a new period under § 1.135(c)) within which to correct the objection.

Since design applications are not subject to the eighteen-month publication provisions of 35 U.S.C. 122(b), drawings in a design application will continue to be admitted for examination if the drawings meet the requirements of § 1.84(e), (f), and (g) and are suitable for reproduction.

Section 1.98: Section 1.98(a)(2)(i) is proposed to be amended to also refer to U.S. patent application publications. Section 1.98(b) is proposed to be amended to provide that each U.S. patent application publication listed in an information disclosure statement shall be identified by applicant, patent application publication number, and publication date. The proposed changes to § 1.98 also reflect changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.99: Section 1.99(a) as proposed provides that a submission by a member of the public of patents or publications relevant to a pending published application will be entered in the application file if the submission complies with the requirements of § 1.99 and the application is still pending when the submission and application file are brought before the examiner. The entry of such a submission does not mean that the patents or printed publications contained in the submission will be necessarily considered and cited by the examiner. If the examiner considers a patent or printed publication contained in the submission to be pertinent in determining patentability, the examiner will initial that patent or printed publication on the listing of the patents or publications submitted for consideration by the Office.

Section 1.99(b) as proposed provides that a submission under § 1.99 must identify the application to which it is directed by application number and include: (1) The fee set forth in § 1.17(p); (2) a listing of the patents or publications submitted for consideration by the Office; (3) a copy of each listed patent or publication in written form or at least the pertinent portions thereof; and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent or publication in written form relied upon.

Section 1.99(c) as proposed provides that a submission under § 1.99 must be served upon the applicant in accordance with § 1.248.

Section 1.99(d) as proposed provides that a submission under § 1.99 may not include any explanation of the patents, publications, or any other information, and is limited to twenty total patents or publications.

Section 1.99(e) as proposed also provides that a submission under § 1.99 must be filed within two months of the date of publication of the application (§ 1.215(a)), or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier, and that any submission under § 1.99 not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). Section 1.99(e) as proposed also provides that a submission by a member of the public to a pending published application that does not comply with the requirements of § 1.99 will be returned or disregarded.

Section 1.99(f) as proposed provides that the involvement of a member of the public in filing a submission under § 1.99 ends with the filing of the submission.

Section 1.104: Section 1.104(d) is proposed to be amended to provide that if domestic (U.S.) patent application publications are cited by the examiner,

their publication number, publication date, and the names of the applicants will be stated.

Section 1.130: Section 1.130(a) is proposed to be amended to refer to published applications (as well as patents). Specifically, § 1.130 is proposed to also be applicable to a rejection of a claim in an application or patent under reexamination based upon a patent application publication in the situation in which the application or patent under reexamination and the published application are currently owned by the same party.

Section 1.131: Section 1.131(a) is proposed to be amended to provide that: (1) The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT Article 21(2) is the date that it is effective as a reference under 35 U.S.C. 102(e); and (2) prior invention may not be established under § 1.131 if the rejection is based upon either a U.S. patent or a U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n).

Section 1.131 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.132: Section 1.132 is proposed to be amended to provide that an oath or declaration may not be submitted under § 1.132 to traverse a rejection if the rejection is based upon a U.S. patent or a U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n).

Section 1.132 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.137: Section 1.137 is proposed to be amended to: (1) Make its provisions applicable to the revival of a terminated reexamination proceeding; (2) provide for the revival of an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty; and (3) reorganize certain provisions for clarity.

The provisions for revival of a terminated reexamination proceeding (on the basis of unavoidable and unintentional delay) are discussed in a separate rulemaking (to implement the optional *inter partes* reexamination provisions of the ''American Inventors Protection Act of 1999'').

As discussed above, if an applicant makes a request (nonpublication request) upon filing with the appropriate certifications, the application will not be published under 35 U.S.C. 122(b)(1). *See* 35 U.S.C. 122(b)(2)(B)(i). An applicant who has made a nonpublication request but who subsequently files an application directed to the invention disclosed in the application filed in the Office in a foreign country, or under a multilateral international agreement, that requires eighteen-month publication, must notify the Office of such filing within forty-five days after the date of such filing, with the failure to timely provide such a notice to the Office resulting in abandonment of the application. *See* 35 U.S.C. 122(b)(2)(B)(iii). 35 U.S.C. 122(b)(2)(B)(iii), however, also provides that an application abandoned as a result of the failure to timely provide such a notice to the Office is subject to revival if the ''delay in submitting the notice was unintentional.'' *See id.*

Section 1.137(f) as proposed provides for the revival of an application abandoned for failure to timely notify the Office of a foreign filing. 35 U.S.C. 122(b)(2)(B)(iii) provides for revival only on the basis of unintentional delay, and not on the basis of unavoidable delay. *Compare* 35 U.S.C. 122(b)(2)(B)(iii)(''delay * * * was unintentional'') *with* 35 U.S.C. 111(a)(4) (''delay * * * was unavoidable or unintentional''). Therefore, § 1.137(f) as proposed provides that a nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires eighteen-month publication may be revived only pursuant to § 1.137(b). Section 1.137(f) as proposed also provides that the reply requirement of § 1.137(c) is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under § 1.137 will not operate to stay any period for reply that may be running against the application. Since the Office cannot ascertain whether an application is abandoned under 35 U.S.C. 122(b)(2)(B)(iii), the Office may continue to process and examine the application until the applicant notifies the Office that the application is abandoned. Therefore, § 1.137(f) provides that the filing of a petition under § 1.137 to revive such an application will not operate to stay any period for reply that may be running against the application.

Section 1.137 is also proposed to be amended to locate the ''reply requirement'' provisions in § 1.137(c), rather than include duplicative provisions concerning the reply requirement in each of § 1.137(a) and (b). Thus, the terminal disclaimer provisions of § 1.137(c), reconsideration provisions of § 1.137(d), and provisional application provisions of § 1.137(e) are proposed to be moved to § 1.137(d), § 1.137(e), and § 1.137(g), respectively. In addition, § 1.137(c) also provides that in an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee. Thus, even if an application abandoned for failure to pay the publication fee is being revived solely for purposes of continuity with a continuing application, the petition to revive under § 1.137 must include payment of the publication fee (unless previously submitted).

Section 1.137 is also proposed to be amended to take into account the provisions of 35 U.S.C. 119(e)(3), which extend the pendency of a provisional application to the next succeeding secular or business day if the day that is twelve months after the filing date of the provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.137 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.138: Section 1.138(a) is proposed to be amended to add ''or publication'' to clarify that a letter of express abandonment may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of publication.

Section 1.138(c) is proposed to be added to provide for a petition for express abandonment to avoid publication. Section 1.138(c) as proposed provides that an applicant seeking to abandon an application to avoid publication of the application (see § 1.211(a)(1)) must submit a declaration of express abandonment by way of a petition including the fee set forth in § 1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process. The petition will be granted when it is recognized in sufficient time to avoid publication of application information and will be denied when it is not recognized in sufficient time to avoid publication of application information. This will avert the situation in which an applicant files a letter of express abandonment to avoid publication, the letter of express abandonment is not recognized in sufficient time to avoid publication, upon publication the applicant wishes to rescind the letter of express

abandonment, and the Office cannot revive the application (once the letter of express abandonment is recognized) because the application was expressly and intentionally abandoned by the applicant.

As discussed above, the publication process is a fourteen-week process, and applicant should expect that the petition will not be granted and application will be published in regular course unless such declaration of express abandonment and petition are received by the appropriate officials more than four weeks prior to the projected date of publication.

Section 1.138 as proposed (§ 1.138(b)) also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.165: Section 1.165 is proposed to be amended to provide that if plant application drawings include a color drawing or photograph, a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing or photograph must be submitted.

Section 1.211: Sections 1.211, 1.213, 1.215, 1.217, 1.219, and 1.221 are proposed to be added to provide for the pre-grant publication of applications under 35 U.S.C. 122(b).

Section 1.211(a) as proposed provides that (with certain exceptions) each U.S. national application for patent filed in the Office under 35 U.S.C. 111(a) and each international application in compliance with 35 U.S.C. 371 will be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code.

Section 1.211(a)(1) as proposed provides that the Office will not publish applications that are recognized as no longer pending. The phrase ''that are recognized by the Office as no longer pending'' is meant to cover the situation in which the period for reply (either the shortened statutory period or the maximum extendable period for reply) to an Office action has expired, but the Office has not yet entered the change of status (to abandoned) of the application in the PALM system and mailed a notice of abandonment. An application will remain in the publication process until the PALM system indicates that the application is abandoned. Obviously, once the PALM system indicates that an application is abandoned, the Office will attempt to remove the application from the publication process and avoid dissemination of application information. How much dissemination of application information can be avoided depends upon how close it is to the publication date when the Office recognizes the application as abandoned. Unless an applicant has received a notice of abandonment, an applicant who wants to abandon the application to avoid publication must file a petition under § 1.138(c) to expressly abandon the application and avoid publication. An applicant permitting an application to become abandoned (for failure to reply to an Office action) to avoid publication by passively waiting for the Office to recognize that the application has become abandoned must bear the risk that the Office will not recognize that the application has become abandoned and change the status of the application in the PALM system in sufficient time to avoid publication.

Section 1.211(a)(2) as proposed provides that the Office will not publish applications that are national security classified (see § 5.2(c)), subject to a secrecy order under 35 U.S.C. 181, or under national security review.

Section 1.211(a)(3) as proposed provides that the Office will not publish applications that have issued as a patent in sufficient time to be removed from the publication process. If the pre-grant publication process coincides with the patent issue process, the Office will continue with the pre-grant publication process until a patent actually issues. This is because there are many instances in which the Office mails a notice of allowance (§ 1.311) in an application but the application does not issue as a patent in regular course (abandonment due to failure to pay the issue fee, or withdrawal from issue either *sua sponte* by the Office or on petition of the applicant). Therefore, the Office will not discontinue the pre-grant publication process until a patent has actually issued. Since the Office cannot discontinue the pre-grant publication process during the last two weeks of the publication process, this will result in a few applications being issued as a patent and subsequently being published as a patent application publication. The Office will refund the publication fee (if paid) if the application is not published as a patent application publication, but will not refund the publication fee if the application is published as a patent application publication, even if published after the patent issues.

Section 1.211(a)(4) as proposed also provides that the Office will not publish applications that were filed with a nonpublication request in compliance with § 1.213(a).

Section 1.211(b) as proposed provides that provisional applications under 35 U.S.C. 111(b) shall not be published. Section 1.211(b) as proposed also provides that design applications under 35 U.S.C. chapter 16 and reissue applications under 35 U.S.C. chapter 25 shall not be published under § 1.211. Provisional applications under 35 U.S.C. 111(b) and design applications under 35 U.S.C. chapter 16 are excluded from the pre-grant publication provisions of 35 U.S.C. 122(b). *See* 35 U.S.C. 122(b)(2)(A)(iii) and (iv). Reissue applications under 35 U.S.C. chapter 25 are not maintained in confidence under 35 U.S.C. 122(a). *See* § 1.11(b).

Section 1.211(c) as proposed provides that the Office will not publish an application filed under 35 U.S.C. 111(a) until it includes the basic filing fee, an English translation if in a language other than English, and an executed oath or declaration. Section 1.211(c) as proposed also provides that publishing may be delayed until the application includes a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84, and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), and until any petition under § 1.47 is granted. That is, if an application does not contain the application content on papers or drawings of sufficient quality to create a patent application publication by eighteen months from its earliest claimed filing date, the Office will publish the application as soon as practical after these deficiencies are corrected.

Section 1.211(d) as proposed provides that the Office may refuse to publish an application, or to include a portion of an application in the patent application publication (§ 1.215), if publication of the application or portion thereof would violate Federal or state law, or if the application or portion thereof contains offensive or disparaging material. A similar provision exists in PCT practice, in that the International Bureau may omit expressions or drawings in an international application from its publications if the expressions or drawings are contrary to morality or public order, or contain disparaging statements. *See* PCT Article 21(6) and Rule 9.

Section 1.211(e) as proposed provides that the publication fee set forth in § 1.18(d) must be paid in each application published under this section before the patent will be granted, but does not require that the publication fee be paid prior to publication. If an application is subject to publication under this section, the sum specified in the notice of allowance under § 1.311 will also include the publication fee

which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable. If the application is not published under this section, the publication fee (if paid) will be refunded.

Section 1.213: Section 1.213 implements the provisions of 35 U.S.C. 122(b)(2)(B)(i)–(iii). An applicant may request that the application not be published under 35 U.S.C. 122(b) and § 1.211 if the invention disclosed in an application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing. Section 1.213(a) requires that a request that an application not be published under 35 U.S.C. 122(b) (nonpublication request) must: (1) Be submitted with the application upon filing; (2) state in a conspicuous manner that the application is not to be published under 35 U.S.C. 122(b); (3) contain a certification that the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing; and (4) be signed in compliance with § 1.33(b). The requirement that a nonpublication request be submitted ''upon filing'' is a requirement of statute (35 U.S.C. 122(b)(2)(B)(i)), and, as such, the Office must deny any petition requesting a waiver of this provision of § 1.213(a).

Section 1.213(b) as proposed provides that the applicant may rescind a nonpublication request at any time. *See* 35 U.S.C. 122(b)(2)(B)(ii). Section 1.213(b) as proposed also provides that a request to rescind a nonpublication request under § 1.213(a) must: (1) Identify the application to which it is directed (§ 1.5); (2) state in a conspicuous manner that the request that the application is not to be published under 35 U.S.C. 122(b) is rescinded; and (3) be signed in compliance with § 1.33(b). Once a request under § 1.213(b) to rescind a nonpublication request is filed and processed by the Office, the application will be scheduled for publication in accordance with § 1.211(a).

Section 1.213(c) reiterates the provisions of 35 U.S.C. 122(b)(2)(B)(iii). Section 1.213(c) specifically states that if an applicant who has submitted a nonpublication request under § 1.213(a) subsequently files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant must notify the Office of such filing within forty-five days after the date of the filing of such foreign or international application. The failure to timely notify the Office of the filing of such foreign or international application shall result in abandonment of the application in which the nonpublication request was submitted. *See* 35 U.S.C. 122(b)(2)(B)(iii).

Section 1.215: Section 1.215(a) as proposed indicates that the publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The Office will not mail a paper copy of the patent application publication to the applicant, but will mail a notice to the applicant indicating that the application has been published.

Section 1.215(a) as proposed also provides that the date of publication shall be indicated on the patent application publication.

Section 1.215(a) as proposed also provides that (except as discussed below in § 1.215(c)) the patent application publication will be based upon the application papers deposited on the filing date of the application, except for preliminary amendments, as well as the executed oath or declaration submitted to complete the application, and any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825. That is, the patent application publication will not reflect the application as it was amended during the examination process, but will only reflect the application as recorded in the Office's PACR database.

Section 1.215(b) as proposed provides a mechanism by which applicants may have assignee information (the name and address of the assignee of the entire right, title, and interest in an application) included on the patent application publication. To have assignee information included on the patent application publication, the applicant must include a separate paper indicating that such information is being provided for inclusion on the patent application publication. The assignee information might not be included on the patent application publication if such paper is not included with the application on filing. Finally, § 1.215(b) clarifies that providing assignee information for inclusion on the patent application publication does not substitute for an assignment submitted to the Office for recording under 37 CFR part 3.

Section 1.215(c) as proposed provides a mechanism by which applicants may have the patent application publication reflect the application as amended during the examination process (rather than the application as recorded in the Office's PACR database). Section 1.215(c) as proposed provides that the Office will use an applicant-supplied copy of the application (specification, drawings, and oath or declaration), provided that: (1) The copy is in compliance with the Office electronic filing system (EFS) requirements; and (2) the EFS copy is filed within one month of the actual filing date of the application or fourteen months of the earliest filing date for which a benefit is sought, whichever is later.

The fourteen-month period differs from the sixteen-month period provided in § 1.217 for submitting a redacted copy of an application because the sixteen-month period provided in § 1.217 is not based upon the fourteen-week publication cycle but is provided for by statute (35 U.S.C. 122(b)(2)(B)(v)).

Section 1.215(d) as proposed provides that if the copy of the application does not comply with the Office EFS requirements, the Office will publish the application based upon the application records in the Office's PACR database (as provided in § 1.215(a)). If, however, the Office has not started the publication process, the Office may use an untimely filed copy of the application supplied by the applicant under § 1.215(c) in creating the patent application publication.

Section 1.217: Section 1.217(a) as proposed implements the provisions of 35 U.S.C. 122(b)(2)(B)(v), and provides that if an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office for publication, eliminating any part or description of the invention that is not also contained in any of the corresponding applications filed in a foreign country. Section 1.217(a) as proposed also provides that the Office will publish the application as provided in § 1.215(a) unless the applicant files a redacted copy of the application in

compliance with § 1.217 within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code. This sixteen-month period is provided by statute (35 U.S.C. 122(b)(2)(B)(v)), and as such, requests for waiver of this sixteen-month period will be denied.

As discussed above, this sixteen-month period provided in § 1.217 differs from the fourteen-month period provided in § 1.215(c) because the sixteen-month period provided in § 1.217 is not based upon the fourteen-week publication cycle but is provided for by statute (35 U.S.C. 122(b)(2)(B)(v)). If a redacted copy of an application is submitted in compliance with § 1.217 but later than four months prior to the projected publication date, the Office will be required to reprocess the patent application publication (for which assembly will have already started) using the redacted copy of the application provided by applicant.

Section 1.217(b) as proposed provides that the redacted copy of the application must be submitted in compliance with the Office EFS requirements. Section 1.217(b) as proposed also provides that the title of the invention in the redacted copy of the application must correspond to the title of the application at the time the redacted copy of the application is submitted to the Office. The Office uses the title of the invention (among other information) as provided in an EFS copy of an application to confirm the identity of the application for which the EFS copy is submitted. Thus, if a portion of the title has been redacted such that the title (as redacted) in the EFS copy of the application is different from the title of the invention for the application as shown in PALM, it will appear that the redacted EFS copy of the application incorrectly identifies the application for which the redacted EFS copy is submitted. If an applicant wants to redact a portion of the title, the applicant must first submit an amendment to the title of the invention such that it will correspond to the title as redacted. Section 1.217(b) as proposed also provides that if the redacted copy of the application does not comply with the Office EFS requirements, the Office will publish the application based upon the unredacted records in the Office's PACR database.

Section 1.217(c) as proposed provides that the applicant must also concurrently submit in paper (§ 1.52(a)) to be filed in the application: (1) A certified copy of each foreign-filed application that corresponds to the application for which a redacted copy is submitted; (2) a translation of each such foreign-filed application that is in a language other than English, and a statement that the translation is accurate; (3) a marked-up copy of the application showing the redactions in brackets; and (4) a certification that the redacted copy of the application eliminates only a part or description of the invention that is not contained in any application filed in a foreign country, directly or through a multilateral international agreement, that corresponds to the application filed in the Office. The provisions of § 1.217(c) are designed to ensure that any patent application publication based upon a redacted copy of an application contains the parts and description of the invention contained in any of the corresponding applications filed in a foreign country.

Section 1.217(d) as proposed provides a mechanism for obtaining an appropriately redacted copy of the application contents to provide to members of the public requesting a copy of the file wrapper and contents of the application. Section 1.217(d) as proposed provides that the Office will provide a complete unredacted copy of the file wrapper and contents of an application for which a redacted copy was submitted under § 1.217 (upon payment of a fee) unless the applicant complies with the requirements of § 1.217(d). Since the processing required to provide redacted copies of the application content is the result of an applicant choosing to submit a redacted copy under § 1.217, it is appropriate to require the applicant to timely provide appropriate redacted copies of Office correspondence and applicant submissions, and to pay a processing fee for the special handling required for these papers, should the applicant wish to maintain the redacted portions of the application in confidence prior to the grant of a patent.

Section 1.217(d)(1) as proposed provides that the applicant must accompany the submission required by § 1.217(c) with: (1) a copy of any Office correspondence previously received by applicant including any desired redactions, and a second copy of all Office correspondence previously received by applicant showing the redacted material in brackets; and (2) a copy of each submission previously filed by the applicant including any desired redactions, and a second copy of each submission previously filed by the applicant showing the redacted material in brackets. Section 1.217(d)(2) as proposed provides that the applicant must also: (1) Within one month of the date of mailing of any correspondence from the Office, file a copy of such Office correspondence including any desired redactions, and a second copy of such Office correspondence showing the redacted material in brackets; and (2) with each submission by the applicant, include a copy of such submission including any desired redactions, and a second copy of such submission showing the redacted material in brackets. Section 1.217(d)(3) as proposed provides that each submission under § 1.217(d)(1) or § 1.217(d)(2) must also be accompanied by the processing fee set forth in § 1.17(i) and a certification that the redactions included therein are limited to the elimination of material that is relevant only to the part or description of the invention that is not contained in the redacted copy of the application submitted for publication. If the applicant fails to comply with these requirements, the Office will provide a complete unredacted copy of the file wrapper and contents of the application to any member of the public (upon payment of a fee).

Section 1.217(e) provides that the certificate of mailing or transmission procedure set forth in provisions of § 1.8 do not apply to the time periods set forth in § 1.217.

Section 1.219: Section 1.219 implements the provisions of 35 U.S.C. 122(b)(1) that authorize (but do not require) the Office to publish earlier than at the eighteen-month period set forth in 35 U.S.C. 122(b)(1) at the request of the applicant. Section 1.219 as proposed provides that any request for early publication must be accompanied by the publication fee set forth in § 1.18(d). Section 1.219 as proposed provides that if the applicant does not submit a copy of the application in compliance with the Office EFS requirements, the Office will publish the application based upon the application records in the Office's PACR database (as provided in § 1.215(a)). Section 1.219 as proposed also provides that no consideration will be given to requests for publication on a certain date (which includes a request that certain applications be published on the same date), and such requests will be treated as a request for publication as soon as possible.

Section 1.221: Section 1.221 provides for voluntary publication of applications filed before, but pending on, November 29, 2000, and for requests for republication of applications previously published under § 1.211. Applicants may request republication of an application under § 1.221 to obtain a patent application publication that: (1) corrects immaterial errors or errors not the result of Office mistake; or (2)

reflects the application as amended during prosecution of the application.

Section 1.221(a) as proposed provides that a request for voluntary publication or republication must include a copy of the application in compliance with the Office EFS requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i). Since voluntary publication or republication of applications is not mandated by 35 U.S.C. 122(b)(1), if a request for voluntary publication or republication does not comply with the requirements of § 1.221, or the copy of the application does not comply with the Office EFS requirements, the Office will not publish the application based upon the application records in the Office's PACR database (as provided in § 1.215(a)) but will simply not publish the application and will refund the publication fee (but not the processing fee).

Section 1.221(b) as proposed provides that the Office will grant a request for a corrected or revised patent application publication other than as provided in § 1.221(a) only when the Office makes a material mistake which is apparent from Office records. The phrase ''material mistake'' means a mistake that affects the public's ability to appreciate the technical disclosure of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent (*e.g.,* error in the claims, serious error in a portion of the written description or drawings that is necessary to support the claims). The Office will permit applicants to review the bibliographic information contained in the Office's PALM database via its PAIR system. Therefore, applicants are expected to review that information and bring errors to the Office's attention at least fourteen weeks before the projected date of publication. Section 1.221(b) as proposed also provides that any request for a corrected or revised patent application publication other than as provided in § 1.221(a) must be filed within two months from the date of the patent application publication, and that this period is not extendable.

Section 1.291: Section 1.291(a)(1) implements the provisions of 35 U.S.C. 122(c), which specify that the Office shall establish appropriate procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent may be initiated after publication of the application without the applicant's express written consent. Section 1.291 is proposed to be amended to provide that a protest must be submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first.

Section 1.292: Section 1.292(b)(3) is proposed to be amended to require that any petition to institute a public use proceeding be submitted prior to the date the application was published or mailing of a notice of allowance under § 1.311, whichever occurs first.

Section 1.311: Section 1.311(a) is proposed to be amended to provide that the sum specified in the notice of allowance may (in addition to the issue fee) also include the publication fee, in which case the issue fee and publication fee (§ 1.211(f)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. Section 1.311(a) is also amended to provide that this three-month period is not extendable. Section 1.311(b) is proposed to be amended to provide that an authorization to charge any of the post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance.

Section 1.311(b) as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.417: Section 1.417 is proposed to be added to provide for the submission of international publications or English language translations of international applications pursuant to 35 U.S.C. 154(d)(4). This section as proposed sets forth the requirements for the filing of an English language international publication or translation of an international application in order to ensure proper handling by the Office. Section 1.417 as proposed provides that such a submission must clearly identify the international application to which it pertains under § 1.5(a), and unless it is being submitted pursuant to § 1.494 or § 1.495, must be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Failure to properly identify such submissions will result in the English language international publication or translation of the description and claims of the international application being processed as the filing of a national application under 35 U.S.C. 111(a). Additionally, failure to properly identify the international publication or translation as a submission under 35 U.S.C. 154(d)(4) may cause the Office to be unable to properly track or retrieve the international publication or translation in relation to its international application number. Section 1.417 as proposed also provides that such submissions should be marked ''Box PCT.''

The submission of an international publication or translation of an international application for the purposes of national stage entry in accordance with § 1.494 or § 1.495 may also be relied upon as the submission for the purposes of 35 U.S.C. 154(d)(4). Likewise, an earlier filed international publication or translation (submitted for the purposes of 35 U.S.C. 154(d)(4) and properly identified as such) may also be relied upon for the purpose of satisfying the requirement of 35 U.S.C. 371(c)(2). If applicant intends to rely on such an earlier filed international publication or translation, the submission of documents under § 1.494(f) and § 1.495(g) should include an indication that the international publication or translation has been previously submitted for the purposes of 35 U.S.C. 154(d)(4) to avoid the mailing of either a Notice of Abandonment (PCT/DO/EO/909) indicating that a copy of the international application was not timely filed, or a Notice of Missing Requirements (PCT/DO/EO/905) indicating that a translation of the international application is required. While (as discussed above) applicants may rely on an earlier filed international publication or translation for the purposes of national stage entry and processing, the Office strongly recommends that a second copy of the international publication or translation be included with the initial national stage papers in order to ensure the integrity of the first submitted international publication or translation. Otherwise, processing of the national stage application may result in the alteration of the originally filed international publication or translation through, *e.g.,* the entry of amendments.

Section 1.494: Section 1.494(f) is amended to exempt a copy of the international publication or translation of the international application identified as provided in § 1.417 from the documents that must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371 to avoid being considered a submission under 35 U.S.C. 111(a).

Section 1.495: Section 1.495(g) is amended to exempt a copy of the international publication or translation of the international application identified as provided in § 1.417 from the documents that must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371 to avoid being considered a submission under 35 U.S.C. 111(a).

Part 5

Section 5.1: Section 5.1 is proposed to be amended to implement the provisions of 35 U.S.C. 122(d), which

specify that the application will not be published under 35 U.S.C. 122(b)(1) if publication or disclosure of the application would be detrimental to national security. Section 5.1 as proposed provides that an application under national security review will not be published at least until six months from its filing date or three months from the date the application was referred to a defense agency, whichever is later. These are the current national security review screening time frames for foreign filing license purposes. Section 5.1 as proposed also provides that a national security classified patent application will not be published under § 1.211 of this chapter or allowed under § 1.311 of this chapter until the application is declassified and any secrecy order under § 5.2(a) has been rescinded.

Section 5.1 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice, if adopted, would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rulemaking implements the eighteen-month publication provisions of §§ 4501 through 4508 of the ''American Inventors Protection Act of 1999.'' The changes proposed in this notice (if adopted) would provide procedures for the eighteen-month publication of patent applications.

An applicant may file a nonpublication request (opt-out of eighteen-month publication) if the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires eighteen-month publication. Since almost all small entities file patent applications only in the United States, almost all small entities can choose whether they want their applications to be subject to eighteen-month publication. The Office receives roughly 60,000 applications each year from small entities. Based upon input from small entity groups during the legislative process, the Office expects that small entities will file a nonpublication request for roughly 30,000 applications (fifty percent) with the remaining 30,000 applications being subject to eighteen-month publication. Since the current application allowance rate is roughly sixty-seven percent, roughly 20,000 applications subject to eighteen-month publication will be allowed, at which time a publication fee ($300.00) will be due. Since the publication fee is less than one-third of the combined cost of the application filing fee ($345.00) and patent issue fee ($605.00), there will not be a significant economic impact on a substantial number of small entities due to eighteen-month publication.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice of proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice of proposed rulemaking have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0027, 0651–0031, 0651–0032, 0651–0033, and 0651–0034.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Patent and Trademark Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control number 0651–0031 and 0651–0032. The Patent and Trademark Office is submitting these information collections to OMB for its review and approval because this notice of proposed rulemaking will add the nonpublication request, rescission of the nonpublication request, electronic filing system copy of the application (for publication purposes), copy of the application file content showing redactions, and petition to accept a delayed priority claim to these collections.

As discussed above, this notice of proposed rulemaking also involves currently approved information collections under OMB control numbers: 0651–0021, 0651–0027, 0651–0033, and 0651–0034. The Patent and Trademark Office is not resubmitting those information collection packages to OMB for its review and approval because the changes in this notice of proposed rulemaking do not affect the information collection requirements associated with the information collections under those OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.

Type of Review: Approved through May of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

Estimated Number of Respondents: 102,950.

Estimated Time Per Response: 0.9538 hour.

Estimated Total Annual Burden Hours: 98,195 hours.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0027.

Title: Changes in Patent and Trademark Assignment Practices.

Form Numbers: PTO–1618 and PTO–1619, PTO/SB/15/41.

Type of Review: Approved through May of 2002.

Affected Public: Individuals or Households and Businesses or Other For-Profit Institutions.

Estimated Number of Respondents: 209,040.

Estimated Time Per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 104,520 hours.

Needs and Uses: The Office records about 209,040 assignments or documents related to ownership of patent and trademark cases each year. The Office requires a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,040,630.

Estimated Time Per Response: 0.39 hours.

Estimated Total Annual Burden Hours: 788,421 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 344,100.

Estimated Time Per Response: 8.7 hours.

Estimated Total Annual Burden Hours: 2,994,160 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Approved through September of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 135,250.

Estimated Time Per Response: 0.325 hour.

Estimated Total Annual Burden Hours: 43,893 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0034.

Title: Secrecy/License to Export.

Form Numbers: None.

Type of Review: Approved through January of 2001.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,187.

Estimated Time Per Response: 0.67 hour.

Estimated Total Annual Burden Hours: 1,476 hours.

Needs and Uses: In the interest of national security, patent laws and regulations place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patent in foreign countries.

The principal impact of the changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by §§ 4501 through 4508 of the ''American Inventors Protection Act of 1999'' (enacted into law by § 1000(a)(9), Division B, of Public Law 106–113).

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Special Program Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

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

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 5

Classified information, foreign relations, inventions and patents.

For the reasons set forth in the preamble, 37 CFR Parts 1 and 5 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.9 is amended by revising paragraph (c) to read as follows:

§ 1.9 Definitions.

* * * * *

(c) A published application as used in this chapter means an application for patent which has been published under 35 U.S.C. 122(b).

* * * * *

3. Section 1.11 is amended by revising paragraph (a) to read as follows:

§ 1.11 Files open to the public.

(a) The specification, drawings, and all papers relating to the file of an abandoned published application, except if a redacted copy of the application was used for the patent application publication, a patent, or a statutory invention registration are open to inspection by the public, and copies may be obtained upon the payment of

the fee set forth in § 1.19(b)(2). See § 2.27 for trademark files.

* * * * *

4. Section 1.12 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a)(1) Separate assignment records are maintained in the Patent and Trademark Office for patents and trademarks. The assignment records, relating to original or reissue patents, including digests and indexes, for assignments recorded on or after May 1, 1957, published patent applications, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, for assignments recorded on or after January 1, 1955, are open to public inspection at the Patent and Trademark Office, and copies of those assignment records may be obtained upon request and payment of the fee set forth in § 1.19 and § 2.6 of this chapter.

* * * * *

(b) Assignment records, digests, and indexes relating to any pending or abandoned patent application which has not been published under 35 U.S.C. 122(b) are not available to the public. Copies of any such assignment records and information with respect thereto shall be obtainable only upon written authority of the applicant or applicant's assignee or attorney or agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided by these rules.

* * * * *

5. Section 1.13 is revised to read as follows:

§ 1.13 Copies and certified copies.

(a) Non-certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public, will be furnished by the United States Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name attested by an officer of the United States Patent and Trademark Office authorized by the Director, upon payment of the fee for the certified copy.

6. Section 1.14 is amended by revising paragraphs (a), (b), (c) and (e), and adding paragraphs (h), (i) and (j) to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) *Confidentiality of patent application information.* Patent applications that have not been published under 35 U.S.C. 122(b) are generally preserved in confidence pursuant to 35 U.S.C. 122(a). Information concerning the filing, pendency, or subject matter of an application for patent, including status information, and access to the application, will only be given to the public as set forth in § 1.11 or in this section.

(1) *Status information* is:

(i) Whether the application is pending, abandoned, or patented;

(ii) Whether the application has been published under 35 U.S.C. 122(b); and

(iii) The application ''numerical identifier'' which may be:

(A) The eight digit application number (the two digit series code plus the six digit serial number); or

(B) The six digit serial number plus any one of the filing date of the national application, the international filing date, or date of entry into the national stage.

(2) *Access* is defined as providing the application file for review and copying of any material.

(b) *When status information may be supplied.* Status information of an application may be supplied by the Office to the public if any of the following apply:

(1) Access to the application is available pursuant to paragraph (e) of this section;

(2) The application is referred to by its numerical identifier in a published patent document (*e.g.,* a U.S. patent, a U.S. patent application publication, or an international application publication), or in a U.S. application open to public inspection (§ 1.11(b), or paragraph (e)(2)(i) or (e)(2)(ii) of this section); or

(3) The application is a published international application in which the United States of America has been indicated as a designated state.

(4) The application claims the benefit of the filing date of an application for which status information may be provided pursuant to paragraphs (b)(1) through (b)(3) of this section.

(c) *When copies may be supplied.* A copy of an application-as-filed or a file wrapper and contents may, subject to paragraph (j) of this section (addresses international applications), be supplied by the Office to the public if any of the following apply:

(1) *Application-as-filed.* If a U.S. patent application publication or patent incorporates by reference, or includes a specific reference under 35 U.S.C. 119(e) or 120 to, a pending or abandoned application, a copy of that application-as-filed may be provided to any person upon written request, including the fee set forth in § 1.19(b)(1).

(2) *File wrapper and contents.* A copy of the specification, drawings, and all papers relating to the file of an abandoned or pending published application may be provided to any person upon written request, including the fee set forth in § 1.19(b)(2). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy.

* * * * *

(e) *Public access to a pending or abandoned application may be provided.* Access to an application may, subject to paragraph (j) of this section, be provided to any person if a written request for access is submitted, the application file is available, and any of the following apply:

(1) The application is open to public inspection pursuant to § 1.11(b); or

(2) The application is abandoned, it is not within the file jacket of a pending application under § 1.53(d), and it is referred to:

(i) In a U.S. patent application publication or patent; or

(ii) In another U.S. application which is open to public inspection either pursuant to § 1.11(b) or paragraph (e)(2)(i) of this section.

* * * * *

(h) [Reserved]

(i) *International applications.* (1) Copies of international application files for international applications filed on or after November 29, 2000, and which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with Patent Cooperation Treaty (PCT) Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was

designated, and upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)), if:

(i) With respect to the Home Copy, the international application was filed with the U.S. Receiving Office;

(ii) With respect to the Search Copy, the U.S. acted as the International Searching Authority; or

(iii) With respect to the Examination Copy, the United States acted as the International Preliminary Examining Authority, an International Preliminary Examination Report has issued, and the United States was elected.

(2) A copy of an English language translation of an international application, which has been filed in the Patent and Trademark Office pursuant to 35 U.S.C. 154(2)(d)(4) will be furnished upon written request including a showing that the publication of the application in accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)).

(3) Access to international application files for international applications filed on or after November 29, 2000, and which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with Patent Cooperation Treaty (PCT) Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

(4) In accordance with PCT Article 30, copies of an international application-as-filed under paragraph (c)(1) of this section will not be provided prior to the international publication of the application pursuant to PCT Article 21(2).

(5) Access to international application files under paragraphs (e) and (i)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

(j) *Access or copies in other circumstances.* The Office, either *sua sponte* or on petition, may also provide access or copies of all or part of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. Any petition by a member of the public seeking access to, or copies of, all or part of any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any related papers, must include:

(1) The fee set forth in § 1.17(h); and

(2) A showing that access to the application is necessary to carry out an Act of Congress or that special circumstances exist which warrant petitioner being granted access to all or part of the application.

7. Section 1.17 is amended by revising its heading and paragraphs (h), (i), (l), (m) and (p) and adding paragraph (u) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(h) For filing a petition under one of the following sections which refers to this paragraph: 130.00

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.53(e)—to accord a filing date.
§ 1.59—for expungement and return of information.
§ 1.84—for accepting color drawings or photographs.
§ 1.91—for entry of a model or exhibit.
§ 1.102—to make an application special.
§ 1.103(a)—to suspend action in application.
§ 1.138(c)—to expressly abandon an application to avoid publication.
§ 1.182—for decision on a question not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.295—for review of refusal to publish a statutory invention registration.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(b)—for access to an interference settlement agreement.
§ 1.666(c)—for late filing of interference settlement agreement.
§ 1.741(b)—to accord a filing date to an application for extension of a patent term.
§ 5.12—for expedited handling of a foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for retroactive license.

(i) Processing fee for taking action under one of the following sections which refers to this paragraph: 130.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.
§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.
§ 1.48—for correcting inventorship, except in provisional applications.
§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.
§ 1.55—for entry of late priority papers.
§ 1.99(e)—for processing a belated submission under § 1.99.
§ 1.103(b)—for requesting limited suspension of action in continued prosecution application.
§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.
§ 1.221—for requesting voluntary publication or republication of an application.
§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

* * * * *

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.9(f)): 55.00
By other than a small entity: 110.00

(m) For filing a petition for revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.9(f)): 605.00
By other than a small entity: 1,210.00

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d) or a submission under § 1.99: 240.00

* * * * *

(u) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (§§ 1.55 and 1.78): 1,210.00

8. Section 1.18 is amended by revising its heading and adding paragraph (d) to read as follows:

§ 1.18 Patent post-allowance (including issue) fees.

* * * * *

(d) Publication fee: 300.00

§ 1.24 [Removed and Reserved]

9. Section 1.24 is removed and reserved.

10. Section 1.52 is amended by revising paragraph (d) to read as follows:

§ 1.52 Language, paper, writing, margins.

* * * * *

(d) A nonprovisional or provisional application may be filed in a language other than English.

(1) *Nonprovisional application.* If a nonprovisional application is filed in a language other than English, an English language translation of the non-English language application, a statement that the translation is accurate, and the processing fee set forth in § 1.17(i) are required. If these items are not filed with the application, applicant will be notified and given a period of time within which they must be filed in order to avoid abandonment.

(2) *Provisional application.* If a provisional application is filed in a language other than English, an English language translation of the non-English language provisional application will not be required in the provisional application. See § 1.78(a) for the requirements for claiming the benefit of such provisional application in a nonprovisional application.

11. Section 1.55 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a) through (d), 172, and 365(a) and (b).

(1)(i) In an original application filed under 35 U.S.C. 111(a), the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. This time period is not extendable. The claim must identify the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time period in this paragraph does not apply to an application for a design patent.

(ii) In an application that entered the national stage from an international application after compliance with 35 U.S.C. 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT.

(2) The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by the processing fee set forth in § 1.17(i), but the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323 of this part.

(3) When the application becomes involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when deemed necessary by the examiner, the Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than provided in paragraphs (a)(1) or (a)(2) of this section.

(4) An English-language translation of a non-English-language foreign application is not required except when the application is involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner. If an English-language translation is required, it must be filed together with a statement that the translation of the certified copy is accurate.

* * * * *

(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)–(d), or 365(a) or (b) not presented within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country, and the day, month and year of its filing was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) must be accompanied by:

(1) The surcharge set forth in § 1.17(u); and

(2) A statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

12. Section 1.72 is amended by revising paragraph (a) to read as follows:

§ 1.72 Title and abstract.

(a) The title of the invention may include only characters capable of being created by a keyboard and may not exceed 500 characters in length. The title should be as short and specific as possible. Unless the title is supplied in an application data sheet (§ 1.76), the title of the invention should appear as a heading on the first page of the specification.

* * * * *

13. Section 1.78 is amended by revising paragraphs (a)(2), (a)(3), and (a)(4), and adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) * * *

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. This reference must be submitted during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. This time period is not extendable. Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title. If the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (regardless of whether benefit for such application is claimed in the application data sheet). The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number. Cross references to other related applications may be made when appropriate (see § 1.14). Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and this paragraph is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application. The time period set forth in this paragraph does not

apply to an application for a design patent.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed application must be accompanied by:

(i) The surcharge set forth in § 1.17(u); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(2) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(4) A nonprovisional application other than for a design patent may claim an invention disclosed in one or more prior filed provisional applications. In order for a nonprovisional application to claim the benefit of one or more prior filed provisional applications, each prior provisional application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(k) must be paid within the time period set forth in § 1.53(g).

(5) Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number), and, if the provisional application is filed in a language other than English, an English language translation of the non-English language provisional application and a statement that the translation is accurate. This reference and English language translation of a non-English language provisional application must be submitted during the pendency of the nonprovisional application, and within the later of four months from the actual filing date of the nonprovisional application or sixteen months from the filing date of the prior provisional application. This time period is not extendable. Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title. Except as provided in paragraph (a)(6) of this section, the failure to timely submit the reference and English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and this paragraph is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior provisional application.

(6) If the reference or English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(5) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application may be accepted during the pendency of the nonprovisional application if the claim identifying the prior application by provisional application number and any English language translation of a non-English language provisional application were unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application must be accompanied by:

(i) The surcharge set forth in § 1.17(u); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(5) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

* * * * *

14. Section 1.84 is amended by revising paragraphs (a)(2), (e), and (j) to read as follows:

§ 1.84 Standards for drawings.

(a) * * *

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings;

(iii) A black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing; and

(iv) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

> The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

* * * * *

(e) *Type of paper.* Drawings submitted to the Office must be made on paper which is flexible, strong, white, smooth, non-shiny, and durable. All sheets must be reasonably free from cracks, creases, and folds. Only one side of the sheet may be used for the drawing. Each sheet must be reasonably free from erasures and must be free from alterations, overwritings, and interlineations. Photographs must be developed on paper meeting the sheet-size requirements of paragraph (f) of this section and the margin requirements of paragraph (g) of this section. See paragraph (b) of this section for other requirements for photographs.

* * * * *

(j) *Front page view.* One of the views should be suitable for inclusion on the front page of the patent application publication and patent as the illustration of the invention. Applicant may suggest a single view (by figure number) for inclusion on the front page of the patent application publication and patent.

* * * * *

15. Section 1.85 is amended by revising paragraph (a) to read as follows:

§ 1.85 Corrections to drawings.

(a) A utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected. Except as provided in § 1.215(c), any patent application publication will not include drawings filed after the application has been placed on the files for examination. Unless applicant is otherwise notified in an Office action, objections to the drawings in a utility or plant application will not be held in abeyance, and a request to hold objections to the drawings in abeyance will not be considered a *bona fide* attempt to advance the application to final action (§ 1.135(c)). If a drawing in a design application meets the requirements of § 1.84(e), (f), and (g) and is suitable for reproduction, but is not otherwise in compliance with § 1.84, the drawing may be admitted for examination.

* * * * *

16. Section 1.98 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 1.98 Content of information disclosure statement.

(a) * * *

(2) A legible copy of:

(i) Each U.S. patent application publication and U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed;

(iii) For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and (iv) All other information or that portion which caused it to be listed; and

* * * * *

(b) Each U.S. patent listed in an information disclosure statement shall be identified by patentee, patent number, and issue date. Each U.S. patent application publication listed in an information disclosure statement shall be identified by applicant, patent application publication number, and publication date. Each listed U.S. application shall be identified by the inventor, application number, and filing date. Each listed foreign patent or published foreign patent application shall be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application. Each listed publication shall be identified by author (if any), title, relevant pages of the publication, date, and place of publication.

* * * * *

17. A new § 1.99 is added to read as follows:

§ 1.99 Third party submission in published application.

(a) A submission by a member of the public of patents or publications relevant to a pending published application will be entered in the application file if the submission complies with the requirements of this section and the application is still pending when the submission and application file are brought before the examiner.

(b) A submission under this section must identify the application to which it is directed by application number and include:

(1) The fee set forth in § 1.17(p);

(2) A listing of the patents or publications submitted for consideration by the Office;

(3) A copy of each listed patent or publication in written form or at least the pertinent portions thereof; and

(4) An English language translation of all the necessary and pertinent parts of any non-English language patent or publication in written form relied upon.

(c) The submission under this section must be served upon the applicant in accordance with § 1.248.

(d) A submission under this section may not include any explanation of the patents, publications, or any other information, and is limited to twenty total patents or publications.

(e) A submission under this section must be filed within two months of the date of publication of the application (§ 1.215(a)) or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Any submission under this section not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). A submission by a member of the public to a pending published application that does not comply with the requirements of this section will be returned or discarded.

(f) A member of the public may include a self-addressed postcard with a submission to receive an acknowledgment by the Office that the submission has been received. A member of the public filing a submission under this section will not receive any communications from the Office relating to the submission other than the return of a self-addressed postcard. In the absence of a request by the Office, an applicant has no duty to, and need not, reply to a submission under this section. The limited involvement of the member of the public filing a submission pursuant to this section ends with the filing of the submission, and no further submission on behalf of the member of the public will be considered, except for additional prior art, or unless such submission raises new issues which could not have been earlier presented.

18. Section 1.104 is amended by revising paragraph (d)(1) to read as follows:

§ 1.104 Nature of examination.

* * * * *

(d) *Citation of references.* (1) If domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees will be stated. If domestic patent application publications are cited by the examiner, their publication number, publication date, and the names of the applicants will be stated. If foreign published applications or patents are cited, their nationality or country, numbers and dates, and the names of the patentees will be stated, and such other data will be furnished as may be necessary to enable the applicant, or in the case of a reexamination proceeding, the patent owner, to identify the published applications or patents cited. In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon will be identified. If printed publications are cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, will be given.

* * * * *

19. Section 1.130 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.130 Affidavit or declaration to disqualify commonly owned patent or published application as prior art.

(a) When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 103 on a U.S. patent or U.S. patent application publication which is not prior art under 35 U.S.C. 102(b), and the inventions defined by the claims in the application or patent under reexamination and by the claims in the patent or published application are not identical but are not patentably distinct, and the inventions are owned by the same party, the applicant or owner of the patent under reexamination may disqualify the patent or patent application publication as prior art. The patent or patent application publication can be

disqualified as prior art by submission of:

(1) A terminal disclaimer in accordance with § 1.321(c); and

(2) An oath or declaration stating that the application or patent under reexamination and patent or published application are currently owned by the same party, and that the inventor named in the application or patent under reexamination is the prior inventor under 35 U.S.C. 104.

* * * * *

20. Section 1.131 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention.

(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT Article 21(2) is the date that it is effective as a reference under 35 U.S.C. 102(e). Prior invention may not be established under this section in any country other than the United States, a NAFTA country, or a WTO member country. Prior invention may not be established under this section before December 8, 1993, in a NAFTA country other than the United States, or before January 1, 1996, in a WTO member country other than a NAFTA country. Prior invention may not be established under this section if either:

(1) The rejection is based upon a U.S. patent or U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n); or

(2) The rejection is based upon a statutory bar.

* * * * *

21. Section 1.132 is revised to read as follows:

§ 1.132 Affidavits or declarations traversing rejections or objections.

When any claim of an application or a patent under reexamination is rejected or objected to, an oath or declaration may be submitted to traverse the rejection or objection. An oath or declaration may not be submitted under this section to traverse a rejection if the rejection is based upon a U.S. patent or a U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n).

22. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

(a) *Unavoidable.* Where the delay in reply by applicant or patent owner was unavoidable, a petition may be filed to revive an abandoned application, a terminated reexamination proceeding, or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(b) *Unintentional.* Where the delay in reply by applicant or patent owner was unintentional, a petition may be filed to revive an abandoned application, a terminated reexamination proceeding, or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(c) *Reply.* In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(d) *Terminal disclaimer.* (1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:

(i) The period of abandonment of the application; or

(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.

(2) Any terminal disclaimer pursuant to paragraph (d)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed after June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

(3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, or to reexamination proceedings.

(e) *Request for reconsideration.* Any request for reconsideration or review of a decision refusing to revive an abandoned application or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136 for an abandoned

application or lapsed patent; under the provisions of § 1.550(c) for a terminated *ex parte* reexamination proceeding filed under § 1.510; and under the provisions of § 1.956 for a terminated *inter partes* reexamination proceeding filed under § 1.913.

(f) *Abandonment for failure to notify the Office of a foreign filing.* A nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing, may be revived only pursuant to paragraph (b) of this section. The reply requirement of paragraph (c) of this section is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under this section will not operate to stay any period for reply that may be running against the application.

(g) *Provisional applications.* A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section. Subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

23. Section 1.138 is revised to read as follows:

§ 1.138 Express abandonment.

(a) An application may be expressly abandoned by filing in the Patent and Trademark Office a written declaration of abandonment identifying the application. Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue or publication.

(b) A written declaration of abandonment must be signed by a party authorized under § 1.33(b)(1), (b)(3) or (b)(4) to sign a paper in the application, except as otherwise provided in this paragraph. A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a) when filing a continuing application may expressly abandon the prior application as of the filing date granted to the continuing application.

(c) An applicant seeking to abandon an application to avoid publication of the application (see § 1.211(a)(1)) must submit a declaration of express abandonment by way of a petition under this section including the fee set forth in § 1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process. Applicant should expect that the petition will not be granted and the application will be published in regular course unless such declaration of express abandonment and petition are received by the appropriate officials more than four weeks prior to the projected date of publication.

24. Section 1.165 is amended by revising paragraph (b) to read as follows:

§ 1.165 Plant drawings.

* * * * *

(b) The drawings may be in color. The drawing must be in color if color is a distinguishing characteristic of the new variety. Two copies of color drawings or photographs and a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing or photograph must be submitted.

25. A new, undesignated center heading and new sections 1.211, 1.213, 1.215, 1.217, 1.219, and 1.221 are added to Subpart B to read as follows:

Publication of Applications

§ 1.211 Publication of applications.

(a) Each U.S. national application for patent filed in the Office under 35 U.S.C. 111(a) and each international application in compliance with 35 U.S.C. 371 will be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code, unless:

(1) The application is recognized by the Office as no longer pending;

(2) The application is national security classified (see § 5.2(c)), subject to a secrecy order under 35 U.S.C. 181, or under national security review;

(3) The application has issued as a patent in sufficient time to be removed from the publication process; or

(4) The application was filed with a nonpublication request in compliance with § 1.213(a).

(b) Provisional applications under 35 U.S.C. 111(b) shall not be published, and design applications under 35 U.S.C. chapter 16 and reissue applications under 35 U.S.C. chapter 25 shall not be published under this section.

(c) An application filed under 35 U.S.C. 111(a) will not be published until it includes the basic filing fee (§ 1.16(a) or 1.16(g)), any English translation required by § 1.52(d), and an executed oath or declaration under § 1.63. The Office may delay publishing any application until it includes a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84, and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), and until any petition under § 1.47 is granted.

(d) The Office may refuse to publish an application, or to include a portion of an application in the patent application publication (§ 1.215), if publication of the application or portion thereof would violate Federal or state law, or if the application or portion thereof contains offensive or disparaging material.

(e) The publication fee set forth in § 1.18(d) must be paid in each application published under this section before the patent will be granted. If an application is subject to publication under this section, the sum specified in the notice of allowance under § 1.311 will also include the publication fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable. If the application is not published under this section, the publication fee (if paid) will be refunded.

§ 1.213 Nonpublication request.

(a) If the invention disclosed in an application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the application will not be published under 35 U.S.C. 122(b) and § 1.211 provided:

(1) A request (nonpublication request) is submitted with the application upon filing;

(2) The request states in a conspicuous manner that the application is not to be published under 35 U.S.C. 122(b);

(3) The request contains a certification that the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing; and

(4) The request is signed in compliance with § 1.33(b).

(b) The applicant may rescind a nonpublication request at any time. A request to rescind a nonpublication request under paragraph (a) of this section must:

(1) Identify the application to which it is directed;

(2) State in a conspicuous manner that the request that the application is not to be published under 35 U.S.C. 122(b) is rescinded; and

(3) Be signed in compliance with § 1.33(b).

(c) If an applicant who has submitted a nonpublication request under paragraph (a) of this section subsequently files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant must notify the Office of such filing within forty-five days after the date of the filing of such foreign or international application. The failure to timely notify the Office of the filing of such foreign or international application shall result in abandonment of the application in which the nonpublication request was submitted (35 U.S.C. 122(b)(2)(B)(iii)).

§ 1.215 Patent application publication.

(a) The publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The date of publication shall be indicated on the patent application publication. The patent application publication will be based upon the application papers deposited on the filing date of the application, except for preliminary amendments, as well as the executed oath or declaration submitted to complete the application, and any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825, except as otherwise provided in this section.

(b) If applicant wants the patent application publication to include assignee information, the applicant must include a separate paper indicating that such information is being provided for inclusion on the patent application publication. Assignee information might not be included on the patent application publication if such paper is not included with the application on filing. Assignee information as used in this paragraph means the name and address of the assignee of the entire right, title, and interest in an application. Providing this information does not substitute for compliance with any requirement of part 3 of this chapter to have an assignment recorded by the Office.

(c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended during examination, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the actual filing date of the application or fourteen months of the earliest filing date for which a benefit is sought under title 35, United States Code, whichever is later.

(d) If the copy of the application submitted pursuant to paragraph (c) of this section does not comply with the Office electronic filing system requirements, the Office will publish the application as provided in paragraph (a) of this section. If, however, the Office has not started the publication process, the Office may use an untimely filed copy of the application supplied by the applicant under paragraph (c) of this section in creating the patent application publication.

§ 1.217 Publication of a redacted copy of an application.

(a) If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office for publication, eliminating any part or description of the invention that is not also contained in any of the corresponding applications filed in a foreign country. The Office will publish the application as provided in § 1.215(a) unless the applicant files a redacted copy of the application in compliance with this section within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code.

(b) The redacted copy of the application must be submitted in compliance with the Office electronic filing system requirements. The title of the invention in the redacted copy of the application must correspond to the title of the application at the time the redacted copy of the application is submitted to the Office. If the redacted copy of the application does not comply with the Office electronic filing system requirements, the Office will publish the application as provided in § 1.215(a).

(c) The applicant must also concurrently submit in paper (§ 1.52(a)) to be filed in the application:

(1) A certified copy of each foreign-filed application that corresponds to the application for which a redacted copy is submitted;

(2) A translation of each such foreign-filed application that is in a language other than English, and a statement that the translation is accurate;

(3) A marked-up copy of the application showing the redactions in brackets; and

(4) A certification that the redacted copy of the application eliminates only the part or description of the invention that is not contained in any application filed in a foreign country, directly or through a multilateral international agreement, that corresponds to the application filed in the Office.

(d) The Office will provide a copy of the complete file wrapper and contents of an application for which a redacted copy was submitted under this section to any person upon written request pursuant to § 1.14(c)(2), unless applicant complies with the requirements of paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) Applicant must accompany the submission required by paragraph (c) of this section with the following:

(i) A copy of any Office correspondence previously received by applicant including any desired redactions, and a second copy of all Office correspondence previously received by applicant showing the redacted material in brackets; and

(ii) A copy of each submission previously filed by the applicant including any desired redactions, and a second copy of each submission previously filed by the applicant showing the redacted material in brackets.

(2) In addition to providing the submission required by paragraphs (c) and (d)(1) of this section, applicant must:

(i) Within one month of the date of mailing of any correspondence from the Office, file a copy of such Office correspondence including any desired redactions, and a second copy of such Office correspondence showing the redacted material in brackets; and

(ii) With each submission by the applicant, include a copy of such submission including any desired redactions, and a second copy of such submission showing the redacted material in brackets.

(3) Each submission under paragraph (d)(1) or (d)(2) of this paragraph must also be accompanied by the processing fee set forth in § 1.17(i) and a certification that the redactions included therein are limited to the elimination of material that is relevant

only to the part or description of the invention that were not contained in the redacted copy of the application submitted for publication.

(e) The provisions of § 1.8 do not apply to the time periods set forth in this section.

§ 1.219 Early publication.

(a) Applications that will be published under § 1.211 may be published earlier than as set forth in § 1.211(a) at the request of the applicant. Any request for early publication must be accompanied by the publication fee set forth in § 1.18(d). If the applicant does not submit a copy of the application in compliance with the Office electronic filing system requirements, the Office will publish the application as provided in § 1.215(a). No consideration will be given to requests for publication on a certain date, and such requests will be treated as a request for publication as soon as possible.

§ 1.221 Voluntary publication or republication of patent application publication.

(a) Any request for publication of an application filed before, but pending on, November 29, 2000, and any request for republication of an application previously published under § 1.211, must include a copy of the application in compliance with the Office electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i). If the request does not comply with the requirements of this paragraph or the copy of the application does not comply with the Office electronic filing system requirements, the Office will not publish the application and will refund the publication fee.

(b) The Office will grant a request for a corrected or revised patent application publication other than as provided in paragraph (a) of this section only when the Office makes a material mistake which is apparent from Office records. Any request for a corrected or revised patent application publication other than as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable.

26. Section 1.291 is amended by revising paragraph (a)(1) to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) * * *

(1) The protest is submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first; and

* * * * *

27. Section 1.292 is amended by revising paragraph (b)(3) to read as follows:

§ 1.292 Public use proceedings.

* * * * *

(b) * * *

(3) The petition is submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first.

* * * * *

28. Section 1.311 is revised to read as follows:

§ 1.311 Notice of allowance.

(a) If, on examination, it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to the applicant at the correspondence address indicated in § 1.33. The notice of allowance shall specify a sum constituting the issue fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. The sum specified in the notice of allowance may also include the publication fee, in which case the issue fee and publication fee (§ 1.211(f)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable.

(b) An authorization to charge the issue or other post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance.

29. A new § 1.417 is added to read as follows:

§ 1.417 Submission of translation of international application.

The submission of the international publication or an English language translation of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and, unless it is being submitted pursuant to § 1.494 or § 1.495, be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked ''Box PCT.''

30. Section 1.494 is amended by revising paragraph (f) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

* * * * *

(f) The documents and fees submitted under paragraphs (b) and (c) of this section must, except for a copy of the international publication or translation of the international application that is identified as provided in § 1.417, be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

31. Section 1.495 is amended by revising paragraph (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

* * * * *

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must, except for a copy of the international publication or translation of the international application that is identified as provided in § 1.417, be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

32. The authority citation for 37 CFR Part 5 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; and the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

33. Section 5.1 as proposed to be revised at 64 FR 53844 is amended by revising paragraph (e) to read as follows:

§ 5.1 Applications and correspondence involving national security.

* * * * *

(e) An application will not be published under § 1.211 of this chapter or allowed under § 1.311 of this chapter if publication or disclosure of the application would be detrimental to national security. An application under national security review will not be published at least until six months from its filing date or three months from the

date the application was referred to a defense agency, whichever is later. A national security classified patent application will not be published under § 1.211 of this chapter or allowed under § 1.311 of this chapter until the application is declassified and any secrecy order under § 5.2(a) has been rescinded.

* * * * *

Dated: March 24, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–7939 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–16–P

Federal Register

Wednesday,
April 5, 2000

Part III

Housing and Urban Development

24 CFR Part 200

Single Family Mortgage Insurance; Appraiser Roster Removal Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4429–F–03]

RIN 2502–AH29

Single Family Mortgage Insurance; Appraiser Roster Removal Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts provisions concerning the functioning of HUD's Appraiser Roster that were published for public comment in a proposed rule on July 2, 1999. The Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration single family appraisals. The provisions adopted by this final rule provide procedures for addressing unsatisfactory appraisers, including removing an appraiser from the Roster.

DATES: *Effective Date:* May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The July 2, 1999 Proposed Rule

On July 2, 1999, HUD published a rule (64 FR 36216) for public comment that proposed to codify the current placement procedures for HUD's Appraiser Roster and proposed procedures for removing an appraiser from the Appraiser Roster. The Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration (FHA) single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can monitor the quality of appraisals performed on single family homes financed through FHA single family programs and to ensure that appraisers performing FHA appraisals meet high competency standards.

The Appraiser Roster is an important part of the FHA Single Family Mortgage Insurance program because accurate appraisals are vital to the success of the Program and HUD's ability to protect the FHA insurance funds. A more complete description of these procedures is presented in the preamble to the July 2, 1999 proposed rule.

The public comment period for the proposed rule closed on August 2, 1999. HUD received 2 comments, one from a banking institution and the other from a trade association. One of the commenters wrote in favor of the proposed rule. The other commenter raised a number of concerns about the proposed removal procedure. This comment is discussed below, in section III.B. of this preamble.

II. The December 28, 1999 Final Rule

On December 28, 1999, HUD published a final rule (64 FR 72868) that adopted certain of the provisions concerning HUD's Appraiser Roster published in the July 2, 1999 proposed rule. Specifically, that final rule adopted the provisions that codify the current Appraiser Roster placement procedure, but did not adopt the independent removal procedure nor certain other related provisions of the July 2, 1999 proposed rule. The structure of the proposed rule was also revised in the December 28, 1999 final rule to comply with President Clinton's Memorandum of June 1, 1998, entitled ''Plain Language in Government'' (63 FR 31885). In particular, the section numbering of the proposed rule was expanded to cover additional headings and the language was revised to present the rule in question-and-answer format.

III. This Final Rule

This final rule adopts the provisions concerning an independent procedure for removing an appraiser from HUD's Appraiser Roster published in the July 2, 1999 proposed rule and also follows the plain language structure of the December 28, 1999 final rule. HUD proposed this independent removal procedure, separate and apart from HUD's existing debarment, suspension, and limited denial of participation administrative remedies, in order to better safeguard the FHA insurance funds and to better protect homebuyers. A summary of the provisions adopted by this final rule is presented in section IV. of this preamble. This section of the preamble provides some additional background on this rulemaking and presents a discussion of the significant issues raised by the public comments.

A. Background

At the outset, it is important to note that HUD proposed § 200.200 to fill a regulatory void created by the removal in 1996 of part 267 HUD's regulations. HUD removed part 267 as part of a page-by-page review of HUD's regulations initiated in response to President Clinton's March 4, 1995, memorandum requiring all Federal departments and agencies to conduct a page-by-page review of their regulations and to eliminate or revise those regulations that were outdated or unnecessary. HUD removed part 267 in a final rule published in the **Federal Register** on April 1, 1996 (61 FR 14395).

Part 267 (previously entitled ''Appraisal and Property Valuation'') was originally implemented in a final rule published in the **Federal Register** on October 3, 1994 (59 FR 50456). The part established the Appraiser Roster in lieu of fee appraisers and contained standards for placement on, and removal from, the Roster. HUD removed the part because, as noted in the preamble to the April 1, 1996 final rule, ''[t]he standards and requirements [for appraisal and property valuation] that are applicable to HUD insured single family and multifamily properties are set forth in contracts or handbooks, and need not be repeated in the CFR.'' The removal of part 267 by the April 1, 1996 final rule did not change any part of HUD's appraisal and property valuation policy.

This rulemaking was instituted because rulemaking is an appropriate means of implementing a procedure having the binding effect of the removal procedure adopted by this final rule and, as noted in the preamble to the July 2, 1999 proposed rule, because HUD had intended to retain the predecessor procedure as part of its regulations despite ''streamlining'' the rest of part 267. HUD inadvertently failed to retain the predecessor removal procedure, and this final rulemaking is intended, in part, to correct this omission.

The original removal procedure, contained in § 267.8(d)(3), read as follows:

> (3) Removal from the Roster. HUD may at any time remove the appraiser from the Roster for cause. Cause includes, but is not limited to, significant deficiencies in appraisals, failure to maintain standing as a State certified or State licensed appraiser and prosecution for committing or attempting to commit fraud, misrepresentation or other offence that may reflect on the appraiser's character and integrity. Such removal shall not be governed by the procedures of part 24 of this title. The appraiser shall, however, be subject to other sanctions in accordance with part 24 of this title.

B. Discussion of Significant Issues Raised by Public Comments

Comment—The proposed rule fails to provide appraisers with even minimally sufficient due process protections. The commenter wrote that the proposed rule

falls short of the minimal due process safeguards to which appraisers are entitled. In particular, the commenter was concerned that the removal procedure does not provide for a judicial-type procedure, as is the case with HUD's existing debarment, suspension and limited denial of participation administrative remedies. The commenter was also concerned that no due process protections were provided for under § 200.200(f) (entitled, ''Education sanctions'').

HUD Response. As noted previously, the Appraiser Roster was created by HUD to replace the previous system of appraiser fee panels. HUD created the Roster to provide a means by which HUD could ensure that appraisers performing FHA appraisals met high competency standards and that their appraisals met high quality standards. Because the purpose of the Roster is to ensure that certain requirements and standards are met, placement on the Roster is similar to the granting of a license to perform FHA appraisals.

Under section 9(c) of the Administrative Procedure Act, now 5 U.S.C. 558(c) (the APA), a license may be withdrawn, suspended, or revoked if the licensee has been given (a) notice by the agency in writing of the facts or conduct that may warrant the action; and (b) opportunity to demonstrate or achieve compliance with all lawful requirements for the license.

The removal procedure adopted in this final rule provides an appraiser with written notice of a proposed removal (which must include the reasons for the action and the duration of the action), a right to submit a written response challenging the proposed removal and to request a conference, and a review by an official who was neither involved in HUD's initial decision nor who reports to a person involved in the initial decision. These procedures clearly meet, and even exceed, the APA requirements.

These procedures also meet the due process standards enunciated by the Supreme Court in *Matthews* v. *Eldridge,* 424 U.S. 319 (1976), in which the Court created a three-pronged test to determine the adequacy of procedural safeguards in an administrative process. This test calls for the balancing of three factors: the private interest affected by the agency; the risk of error; and the Government's interest.

Regarding the first factor, appraisers do not have privity of contract with HUD because they are engaged by lenders and by HUD property management contractors. Therefore, appraisers have no property interest in retention on the Appraiser Roster. This position is supported by *Sutton* v. *United States Department of Housing and Urban Development, et al.,* 885 F. 2d 471 (8th Cir., 1989), cert. den. 493 U.S. 1075 (1990), reh. den. 494 U.S. 1092 (1990), affirming a decision of the U.S. District Court, E.D. MO., that a fee appraiser was not entitled to relief after the Department refused to recertify him. The District Court held that the appraiser's interest in recertification was not within the range of property and liberty interests protected by the due process clause and that his due process rights were not violated by HUD's refusal to recertify him without notice and hearing when he had been given a right to meet with a HUD Official to discuss his nonrecertification and his right to appeal the decision. Although *Sutton* involved a fee panel appraiser (a predecessor to the Appraiser Roster), the similarities between that method for lenders to obtain appraisers and the present method of selection are far greater than the differences. The same is true of the methods for removing appraisers from fee panels and the method for removal from the Appraisal Roster in the proposed rule.

With regard to the second factor, the risk of error is minimal because an appraiser's performance that would lead to removal from the Appraiser Roster will be checked against performance standards. See HUD's response to the next comment.

Insofar as the third factor is concerned, HUD needs a method to remove poorly performing appraisers from the Appraiser Roster as expeditiously as possible to protect its insurance funds from risks resulting from deficient appraisals.

Furthermore, removing unsatisfactory appraisers in an expeditious manner is vital to the continued well-being of the FHA insurance funds because an accurate appraisal is fundamental to making informed financing decisions. HUD's existing debarment, suspension, and limited denial of participation administrative remedies are not always effective as an initial remedy in the case of the Appraiser Roster because of the time required to utilize these procedures.

It is clear that this final rule implements a removal procedure that provides an appropriate level of due process protection for appraisers placed on the Appraiser Roster. It should also be noted that the removal procedures contained in this final rule significantly exceed the due process protections provided for in the original Appraiser Roster removal procedure contained in part 267 (see § 267.8(d)(3) contained in the April 1, 1995 edition of 24 CFR and repeated in section III.(A) of this preamble).

With regard to the commenter's concern about § 200.200(f) of the proposed rule, there is no need for due process protections for this provision because the provision is intended to benefit appraisers placed on the Roster. If HUD determines that an appraiser is not meeting the standards required for continued placement on the Roster, § 200.200(f) gives HUD the option of remedying the situation by requiring the appraiser to attend further professional training. This provision appears at § 200.204(c) of this final rule, and is re-named ''education requirements'' to clarify that it is non-punitive.

The appraiser may, of course, choose not to seek the additional training. In this case, HUD may then choose to remove the appraiser from the Roster. At this point, the appraiser has available to him or her the full range of due process protections provided for by the removal procedure. Section 200.200(f) of the proposed rule allows HUD to provide an alternative and less rigorous response to an appraiser who is not meeting the Appraiser Roster standards. Deletion of the requirements of § 200.200(f) would leave HUD with fewer choices with regard to non-performing appraisers. With § 200.200(f), an appraiser may have the option to rehabilitate his or her performance, making removal unnecessary.

Comment—Causes for removal are broader than those for debarment, suspension, and limited denial of participation. The commenter wrote that the causes for removal listed in the removal procedure are broader, and in some cases, less specific than the causes listed for debarment, suspension, or limited denial of participation. In particular, the commenter was concerned about HUD's interpretation of the term ''significant deficiencies in appraisals'' as a cause for removal.

HUD Response. The removal procedure for the Appraiser Roster is not related to HUD's existing debarment, suspension, and limited denial of participation administrative remedies. The removal procedure and the causes for removal are targeted to the Appraiser Roster. HUD developed these causes for removal with the Appraiser Roster specifically in mind. Any comparison with causes for action under any of HUD's other administrative remedies is misplaced. It may be the case that Appraiser Roster causes for removal are similar, in some cases, to the causes for action under HUD's other remedies. Where the causes differ, however, it is because HUD has

determined that it is necessary to have an expansive list of causes for removal for the Appraisal Roster to ensure effective compliance with the Appraiser Roster requirements and standards.

Regarding the commenter's concern about how HUD will interpret the term ''significant deficiencies,'' the HUD Appraiser Handbook provides important guidance on how the Appraiser Roster is managed. In particular, the Handbook lists a number of violations in chapter 7–4 that provide a more complete picture of what HUD considers significant deficiencies. While this list is not exhaustive, it does provide a substantial guide as to how HUD will enforce HUD's appraisal standards. HUD's Appraiser Handbook may be obtained from HUD's web page at http://www.hud.gov/reac/reasfappr.html or http://www.hudclips.org.

Comment—HUD has offered no evidence that indicates that an independent removal procedure is necessary. The commenter was concerned that HUD had not provided any evidence that indicated that an independent removal procedure, separate from HUD's existing debarment and suspension procedures, was necessary.

HUD Response. In many cases, HUD's existing remedies involve a formal administrative-type procedure. This type of procedure requires a significant investment in time and other resources. Because of the importance of maintaining the high quality of FHA appraisals, HUD has determined that an expeditious means of removing an appraiser from the roster is necessary.

Comment—HUD's stated purpose for ''streamlining'' the disciplinary process contradicts its earlier actions. The commenter was concerned that HUD had failed to discuss in the preamble to the July 2, 1999 proposed rule the reasons why HUD removed predecessor appraiser removal procedure in 1996 during our ''streamlining'' review of all of HUD's regulations. The commenter wrote that ''[i]t is baffling why just three years ago the Department believed that repealing the less formal removal procedure was considered streamlining and now the Department considers recodifying a similar less formal removal provision to be streamlining.

HUD Response. As noted in the preamble to the July 2, 1999 proposed rule and the preamble to this final rule, the removal of the Appraiser Roster removal procedure was inadvertent, and this final rulemaking is intended, in part, to correct this mistake.

IV. Summary of Provisions Adopted by this Final Rule and the December 28, 1999, Final Rule

The following table presents a summary of the provisions adopted by this final rule and the final rule published on December 28, 1999. Both of these final rules are taken from the July 2, 1999, proposed rule. The first column of the table lists the provisions of the proposed rule. The second column lists where the proposed provision appears under the new section numbering of the rule that was initiated by the December 28, 1999 final rule, and which final rule adopted the provision.

Provision in proposed rule . . .	adopted by final rule at . . .
§ 200.200(a)	§ 200.200(a) (December 22, 1999).
§ 200.200(b)	§ 200.200(b) (December 22, 1999).
§ 200.200(c)	§ 200.202 (December 22, 1999).
§ 200.200(d)	§ 202.204(a) of this final rule.
§ 200.200(e)	§ 200.206 (December 22, 1999).
§ 200.200(f)	§ 202.204(b) of this final rule.
§ 200.200(g)	§ 202.204(a) of this final rule.
§ 200.200(h)	§ 202.204(c) of this final rule.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB control number 2502–0538. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. Generally, HUD expects that the number of removal proceedings initiated under this proposed rule would be relatively low. For example, in fiscal year 1998, of the over 30,000 appraisers listed on the Appraiser Roster, HUD initiated enforcement proceedings against only 36 appraisers (most of these enforcement proceedings were Limited Denial of Participation proceedings).

Further, the proposed rule would provide several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants appraisers, selected for removal from the Appraiser Roster, with the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

With respect to removing an appraiser from the Appraiser Roster, or taking other appropriate enforcement action against an appraiser, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847) (''SBREFA'') requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity

conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

VI. List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

2. Section 200.204 is revised to read as follows:

§ 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

An unsatisfactory appraiser may be subject to removal, education requirements, or other actions, as follows:

(a) *Removal from the Appraiser Roster.* HUD officials, as designated by the Secretary, may at any time remove a listed appraiser from the Appraiser Roster for cause in accordance with paragraphs (a)(1) through (a)(3) of this section. The provisions of paragraphs (a)(1) through (a)(3) of this section do not apply to removal actions taken under any section in 24 CFR part 24 nor to any other remedy against an appraiser available to HUD by statute or otherwise.

(1) *Cause for removal.* Cause for removal includes, but is not limited to:

(i) Significant deficiencies in appraisals, including non-compliance with Civil Rights requirements regarding appraisals;

(ii) Failure to maintain standing as a state-certified or state-licensed appraiser;

(iii) Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;

(iv) Failure to perform appraisal functions in accordance with instructions and standards issued by HUD;

(v) Failure to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;

(vi) Being issued a final debarment, suspension, or limited denial of participation;

(vii) Failure to maintain eligibility requirements for placement on the Appraiser Roster as set forth under this subpart or any other instructions or standards issued by HUD; or

(viii) Failure to comply with HUD-imposed education requirements under paragraph (c) of this section within the specified period for complying with such education requirements.

(2) *Procedure for removal.* If you are a listed appraiser and HUD decides to remove you for cause from the Appraiser Roster, the following procedure applies to you unless you have been issued a final debarment, suspension, or limited denial of participation, in which case you are subject to paragraph (a)(3) of this section:

(i) You will be given written notice of your proposed removal. The notice will include the reasons for your proposed removal and the duration of your proposed removal.

(ii) You will have 20 days from the date of your notice of proposed removal to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with a written response.

(iii) Within 30 days of receiving your written response, or if you have requested a conference, within 30 days after the completion of your conference, a HUD official, designated by the Secretary, will review your appeal and will send you a final decision either affirming, modifying, or canceling your removal from the Appraiser Roster. HUD may extend this time upon giving you notice. The HUD official designated by the Secretary to review your appeal will not be someone involved in HUD's initial removal decision nor will it be someone who reports to a person involved in that initial decision.

(iv) If you do not submit a written response, your removal will be effective 20 days after the date of HUD's initial removal notice. If you submit a written response, and the removal decision is affirmed or modified, your removal or modification will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(3) *Automatic removal for issuance of final debarment, suspension, or limited denial of participation.* If you are a listed appraiser and you have been issued a final debarment, a suspension, or a limited denial of participation, the provisions of paragraph (a)(2) of this section do not apply to you, and you will be automatically removed from the Appraiser Roster.

(b) *Reinstatement.* If an appraiser who has been removed from the Roster wants to be reinstated on the Roster, the appraiser must follow the procedures and requirements contained in this subpart for placement on the Roster. Before an appraiser is eligible to reapply for placement on the Roster, the appraiser shall comply with the terms of any applicable remedial training education requirements, and the time

period for the appraiser's removal from the Roster shall have expired.

(c) *Education requirements.* Where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training and retake the HUD test on FHA appraisal methods and reporting.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action, against an appraiser, as provided under 24 CFR part 24, or from seeking any other remedy against an appraiser available to HUD by statute or otherwise.

Dated: March 29, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–8421 Filed 4–4–00; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
April 5, 2000

Part IV

The President

Proclamation 7284—Cancer Control Month, 2000

Proclamation 7285—National Child Abuse Prevention Month, 2000

Proclamation 7286—Census Day, 2000

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 2000

Presidential Documents

Title 3—

The President

Proclamation 7284 of March 31, 2000

Cancer Control Month, 2000

By the President of the United States of America

A Proclamation

Since the discovery of the DNA double helix in 1953, we have learned much about the relationship between genetics and cancer, and researchers have begun to isolate and study genes whose alteration and dysfunction may cause the disease. In the last decade, increased understanding of cancer and growing public awareness of its symptoms and risks have helped us to reverse the upward trend in cancer rates in our Nation. Cancer cases and death rates have declined slightly but steadily in the United States; the 5-year survival rate has improved for all cancers; and 8.4 million Americans are now cancer survivors.

Despite these encouraging trends, this is no time for complacency. Last year alone, more than 1 million people were diagnosed with cancer, and more than 560,000 died from it. And cancer rates are still disproportionately high among certain racial, ethnic, and socioeconomic groups. That is why my Administration remains committed to fighting this deadly disease in every sector of our population. Since 1998, we have boosted investment in biomedical research at the National Institutes of Health by an unprecedented $4.1 billion, including a dramatic increase in funding for the National Cancer Institute (NCI), the primary Federal cancer research agency.

Early detection and preventative treatment remain the best weapons we have in the battle against this disease, and several promising initiatives at the NCI will improve our effectiveness in both areas. The NCI recently issued a ''Director's Challenge'' to spur research nationwide into defining key genetic changes that mark tumors as malignant or precancerous. This information will improve the way tumors are classified and lay the ground work for more precise molecular diagnosis. The NCI is also developing and testing molecular markers specific to certain cancers, as well as working on new technologies to improve detection. This research will help doctors to intervene early, with minimally invasive procedures, to prevent the disease from becoming full-blown.

Another powerful weapon in our crusade is information. Better understanding of risk factors can help people make smarter choices—like quitting smoking or undergoing needed cancer screening. The Cancer Information Service (CIS), a free education service provided by the NCI, acts as the public's link to clear and understandable cancer information. I encourage Americans seeking information on the latest cancer research and treatments to call CIS at 1–800–4–CANCER or to access the NCI directly on the Internet at http://www.cancer.gov.

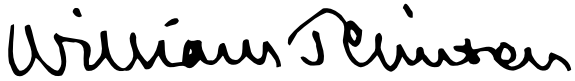
Finally, as we intensify our efforts to fight cancer, we must ensure that no American is left behind. The NCI is working to implement cancer control and prevention programs in minority and underserved communities, as well as to increase minority participation in clinical trials and research. As a result of these efforts, nearly 20 percent of the more than 20,000 patients now entering clinical treatment trials are from an ethnic minority group.

Investment in science and technology produced tremendous progress in health care during the last century. In this new century, we must reaffirm our dedication to the research, information sharing, and access to care that will help us ultimately win the fight against cancer.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 2000 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also call upon health care professionals, private industry, community groups, insurance and managed care companies, and all other interested organizations and individuals to unite in support of our Nation's determined efforts to control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–8569
Filed 4–4–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7285 of March 31, 2000

National Child Abuse Prevention Month, 2000

By the President of the United States of America

A Proclamation

Children are our link to the future and our hope for a better tomorrow. Within a few short years, we will look to today's children for the vision, strength, creativity, and leadership to guide our Nation through the challenges of this new century. If they are to grow into healthy, happy adults and responsible citizens, we must provide our children with the love, nurturing, and protection they need and deserve.

However, many of America's children are not safe, even in their own homes. The statistics are staggering. Every year, there are nearly one million reported incidents of child abuse; and even more disturbing, more than 2,000 of these incidents result in the child's death. Whether suffering neglect, harsh physical punishment, sexual abuse, or psychological trauma, the children who survive will carry the scars of their abuse for the rest of their lives.

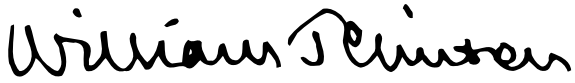
We now know that there are a variety of risk factors that contribute to child abuse and neglect—including parental substance abuse, lack of parenting skills and knowledge, domestic violence, or extreme stress—and there are practical measures and programs we can use to mitigate such factors. Social service providers can offer substance abuse programs for adults with children; schools can offer educational programs to teach parenting skills to teen mothers or instruct children on how to protect themselves from sexual predators; faith organizations can offer respite care for parents of children with special needs; and employers can introduce family-friendly policies, from child care to parental leave to flexible work schedules, to reduce the stress on working families.

Keeping children safe is a community responsibility, and prevention must be a community task. Every segment of society must be involved, including health and law enforcement professionals, schools, businesses, the media, government agencies, community and faith organizations, and especially parents themselves. Teachers and physicians need to recognize the symptoms of child abuse; parents need to ask for help in overcoming addictions or controlling violent behavior; communities must be willing to fund programs and services to protect children from abuse; and the media needs to raise public awareness of the availability of those programs and services.

My Administration is committed to doing its part to ensure the health and well-being of all our Nation's children. We have worked to increase funding at the State level for child protection programs and family preservation services. Working with the Congress, we have enacted the Child Abuse Prevention and Treatment Act and the Adoption and Safe Families Act, and we have established the Safe and Stable Families Program. Just a few weeks ago, I signed into law the Child Abuse Prevention and Enforcement Act, which gives State and local officials greater flexibility in using Department of Justice grant programs to prevent child abuse and neglect. This new legislation will increase funding to enforce child abuse and neglect laws, to enhance the investigation of child abuse and neglect crimes, and to promote programs to prevent such abuse and neglect. Through these and other measures, we continue our efforts to create a society where every child is cherished and no child bears the lasting scars of abuse or neglect.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2000 as National Child Abuse Prevention Month. I call upon all Americans to observe this month by demonstrating our gratitude to those who work to keep our children safe, and by taking action in our own communities to make them healthy places where children can grow and thrive.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–8570
Filed 4–4–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7286 of April 1, 2000

Census Day, 2000

By the President of the United States of America

A Proclamation

Every 10 years, as mandated by our Constitution, all persons living in the United States are called upon to participate in the census. As the foremost method of gathering information about our Nation, the census plays a crucial role in helping us to maintain our democratic form of government.

An accurate census helps to ensure that the rights and needs of every person are recorded and recognized as we shape public policies, programs, and services. Too often in the past, children, minorities, and low-income individuals have not been counted and, as a result, have not been fully and fairly served. Census data are also used to determine the number of seats each State is allocated in the U.S. House of Representatives, and State and local governments depend upon these data to draw legislative districts that accurately represent their residents.

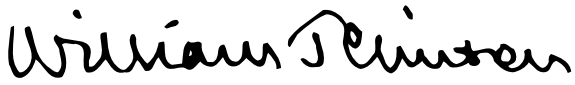
The census also serves as the basis for many public funding and private investment decisions. Census results play a part in determining the portion each State receives of more than $185 billion in funds distributed by the Federal Government each year. State and local public officials use census data to decide where to build public facilities such as schools, roads, hospitals, and libraries. Census data also are a valuable resource for businesses that are trying to identify where to build stores, office buildings, or shopping centers.

The census is unique. It reaches every population group, from America's long-time residents to its most recent immigrants, and every age group from newborns to centenarians. The census touches every social class and every racial and ethnic group. The census is truly a democratic process in which we all can participate.

Census 2000 offers each of us an important opportunity to shape the future of our Nation. By taking part, we help ensure the well-being of our families and our communities, and we fulfill one of our fundamental civic duties. The U.S. Census Bureau has taken unprecedented steps to ensure full participation in this first census of the new millennium. At the same time, the Bureau will continue its long tradition of protecting the personal information of America's citizens, and no other Government agency will be able to see any individual or family census form. I strongly urge every man and woman living in the United States to fill out and return his or her census form or to cooperate with census takers who will help them do so.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 1, 2000, as Census Day. I call upon all the people of the United States to observe this day with ceremonies, activities, and programs that raise awareness of the importance of participating in Census 2000.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–8571
Filed 4–4–00; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 65, No. 66

Wednesday, April 5, 2000

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

17435–17582 3
17583–17754 4
17755–17986 5

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7283 17552
7284 17981
7285 17983
7286 17985

5 CFR

532 17755

7 CFR

985 17756

Proposed Rules:
28 17609
984 17809
1218 17612

9 CFR

201 17758

Proposed Rules:
93 17455

10 CFR

72 17552

12 CFR

951 17435
997 17435

Proposed Rules:
560 17811
915 17458

13 CFR

120 17439

14 CFR

39 ..... 17583, 17586, 17763
71 ..... 17588, 17589
91 17736
93 17736
121 17736
135 17736

Proposed Rules:
23 17613
39 ..... 17471, 17818, 17822, 17824, 17827
71 17616

16 CFR

305 17554

19 CFR

Proposed Rules:
134 17473

21 CFR

1301 17552
1308 ..... 17440, 17552

Proposed Rules:
111 17474

24 CFR

200 17974

26 CFR

Proposed Rules:
1 ..... 17829, 17835
20 17835
25 17835
301 17617

27 CFR

Proposed Rules:
4 17839
275 17477

31 CFR

Ch. 5 17590

32 CFR

581 17440

33 CFR

117 ..... 17443, 17766

37 CFR

Proposed Rules:
1 17946
5 17946
201 17840

38 CFR

Proposed Rules:
21 17477

39 CFR

111 ..... 17593, 17766

40 CFR

52 ..... 17444, 17768, 17771
180 17773

Proposed Rules:
52 17841
141 17842
142 17842

47 CFR

22 17445
27 17594
73 ..... 17607, 17775
101 17445

Proposed Rules:
73 ..... 17617, 17618, 17619

48 CFR

Proposed Rules:
15 17582

49 CFR

533 17776

Proposed Rules:
571.....17842

50 CFR

17.....17779
226.....17786
300.....17805
600.....17805
660.....17805, 17807
679.....17808

Proposed Rules:
223.....17852

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 5, 2000

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Spinosad; published 4-5-00

Water pollution control:
- Underground injection control program—
  - Class V wells; requirements for motor vehicle waste and industrial waste disposal wells and cesspools in ground water-based source protection areas; published 12-7-99

NATIONAL SCIENCE FOUNDATION

Freedom of Information Act and Privacy Act; implementation; published 3-6-00

TRANSPORTATION DEPARTMENT

Coast Guard

Pollution:
- Marine transportation-related facilities and tank vessels; response plans; on-water oil recovery capacity; cap increases review; published 1-6-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bell; published 3-1-00
- MD Helicopters Inc.; published 3-1-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- School bus body joint strength; technical amendment; published 3-6-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Plant variety protection office:
- Fees revision; comments due by 4-14-00; published 3-15-00

Raisins produced from grapes grown in—
- California; comments due by 4-10-00; published 2-9-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Poultry products from Mexico transiting U.S.; comments due by 4-10-00; published 2-8-00

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meetings:
- E. coli in beef products; risk assessment; policy and regulatory changes; comments due by 4-11-00; published 2-11-00

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Minimum Times Interest Earned Ratio (TIER) requirements; reduction; comments due by 4-10-00; published 3-10-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
- Marine and anadromous species—
  - West coast steelhead in California et al.; comments due by 4-11-00; published 2-11-00

DEFENSE DEPARTMENT

Acquisition regulations:
- Contract drawings, maps, and specifications; comments due by 4-10-00; published 2-10-00
- Mentor-protege program improvements; comments due by 4-10-00; published 2-10-00

ENERGY DEPARTMENT

Defense nuclear facilities; disposal of real property for economic development; comments due by 4-14-00; published 2-29-00

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:
- Well category determinations; comments due by 4-10-00; published 2-8-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-10-00; published 3-9-00
- Connecticut and Rhode Island; comments due by 4-10-00; published 3-9-00
- Delaware; comments due by 4-10-00; published 3-9-00
- Georgia; comments due by 4-12-00; published 3-13-00
- Kentucky; comments due by 4-10-00; published 3-10-00

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:
- Communication between applicants in spectrum auctions; comments due by 4-10-00; published 2-8-00

Radio stations; table of assignments:
- Florida; comments due by 4-10-00; published 3-3-00
- Texas; comments due by 4-10-00; published 3-3-00

FEDERAL EMERGENCY MANAGEMENT AGENCY

Disaster assistance:
- Hurricane Floyd property acquisition and relocation grants; comments due by 4-11-00; published 2-11-00
- Public assistance program administration—
  - Insurance requirements; comments due by 4-10-00; published 2-23-00

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Membership regulations; comments due by 4-14-00; published 3-15-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
- American Society for Testing and Materials; amendments to reflect current citations; comments due by 4-10-00; published 1-24-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Equal Access to Justice Act; implementation; comments due by 4-14-00; published 2-14-00

Risk-based capital:
- Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 4-14-00; published 3-13-00

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:
- Disposition; occupancy and use—
  - Alaska occupany and use; Alaska Native veterans allotments; comments due by 4-10-00; published 2-8-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
- Ohlone tiger beetle; comments due by 4-11-00; published 2-11-00
- Showy stickseed; comments due by 4-14-00; published 2-14-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Indiana; comments due by 4-10-00; published 3-9-00

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Cable compulsory licese:
- Network station definition; comments due by 4-11-00; published 2-11-00

NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Party to Compact; State eligibility declaration; comments due by 4-13-00; published 3-14-00

POSTAL SERVICE

Domestic Mail Manual:
- Commercial mail receiving agency; mail delivery; comments due by 4-12-00; published 3-13-00

Sacking and palletizing periodicals nonletters and standard mail (A) flats, traying first-class flats, and labeling pallets; comments due by 4-14-00; published 2-29-00

Practice and procedure:

False representation and lottery orders; proceedings; subpoenas and civil penalties; comments due by 4-13-00; published 3-14-00

SMALL BUSINESS ADMINISTRATION

Small business size standards:

8(a) business development/ small disadvantaged business status determinations; comments due by 4-10-00; published 3-10-00

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old age, survivors, and disability insurance—

Medical criteria for disability determinations; comments due by 4-11-00; published 2-11-00

STATE DEPARTMENT

Consular services; fee schedule; comments due by 4-12-00; published 3-13-00

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades, anchorage regulations, and ports and waterways safety:

OPSAIL 2000, Hampton Roads, VA; regulated areas; comments due by 4-14-00; published 2-29-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Ayres Corp.; comments due by 4-10-00; published 2-16-00

Eurocopter Deutschland GmbH; comments due by 4-11-00; published 2-11-00

Eurocopter France; comments due by 4-11-00; published 2-11-00

Fairchild; comments due by 4-10-00; published 2-16-00

Fokker; comments due by 4-14-00; published 3-15-00

Saab; comments due by 4-14-00; published 3-15-00

Airworthiness standards:

Special conditions—

Boeing Model 727-200 and 727-200F series airplanes; comments due by 4-13-00; published 3-14-00

Raytheon Aircraft Co. Model 4000 airplane; comments due by 4-13-00; published 3-14-00

Class D and Class E airspace; comments due by 4-14-00; published 2-29-00

Class E airspace; comments due by 4-10-00; published 2-24-00

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Utilities; comments due by 4-10-00; published 2-9-00

TREASURY DEPARTMENT

Customs Service

Customs bonds:

Articles subject to exclusion orders issued by International Trade Commission; bond procedures; comments due by 4-10-00; published 2-8-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Partnership debt allocation; comments due by 4-12-00; published 1-13-00

Partnership mergers and divisions; hearing; comments due by 4-10-00; published 1-11-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.