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

WHO: The Office of the Federal Register.

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

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WASHINGTON, DC

WHEN: January 26, at 9:00 a.m.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 87-040]

Use of Irradiation as a Quarantine Treatment for Fresh Fruits of Papaya [1] From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to authorize irradiation as a quarantine treatment for papayas intended for movement from the State of Hawaii to the continental United States, Guam, Puerto Rico, and the Virgin Islands of the United States. We have determined that treating papaya fruit with low dose gamma radiation is an effective quarantine method that will help prevent introduction of the oriental fruit fly [*Dacus dorsalis* (Hendel)], Mediterranean fruit fly [*Ceratitis capitata* (Wiedemann)], and melon fly [*Dacus cucurbitae* (Coquillett)] into the above-named areas. This rule is warranted to provide an additional treatment method to Hawaiian papaya growers who ship their fruit to these areas.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Fons, Acting Chief, Plant Protection Methods Development, APHIS, USDA, Room 228, Federal Building, Hyattsville, Maryland 20782, (301) 436-6472.

SUPPLEMENTARY INFORMATION:

[1] Carica papaya L., also known as papaw or pawpaw.

Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR Part 318 and referred to below as the regulations) include treatments we have approved for papayas intended for shipment from Hawaii to the continental United States, Guam, Puerto Rico, and the Virgin Islands of the United States. These treatments are necessary because of infestations in Hawaii of the oriental fruit fly [*Dacus dorsalis* (Hendel)], Mediterranean fruit fly [*Ceratitis capitata* (Wiedemann)], and melon fly [*Dacus cucurbitae* (Coquillett)]. The three flies together are sometimes referred to as the "Tri-fly complex."

On January 5, 1987, we published a proposal in the **Federal Register** (52 FR 292–296, Docket No. 85–395) to allow gamma irradiation of papayas as an additional quarantine treatment option, and to establish a protocol for carrying out the irradiation.

We solicited comments concerning the proposal for 60 days ending March 6, 1987, and received 43 comments. These comments were from the United Fresh Fruits and Vegetable Association, the State of Hawaii Department of Agriculture, the Papaya Administrative Committee, organizations commercially involved in product irradiation, faculty members of universities in Hawaii, citizens groups, and private individuals. The comments fell into three categories: those entirely opposed to the proposal (31 comments); those entirely in favor of the proposal (seven comments); and those in favor of the proposal with some changes (five comments).

A number of comments that were opposed to the proposal did not include arguments to support their opposition. The remainder of the comments in opposition addressed the following issues:

(1) *Concern over cumulative effect of radiation from eating irradiated food.* The Food and Drug Administration (FDA) is responsible for ensuring that irradiated foods are safe and wholesome for human consumption. The Animal and Plant Health Inspection Service (APHIS), on the other hand, is responsible for ensuring that irradiating papayas as a quarantine treatment and allowing their shipment does not pose a significant risk to agriculture in the United States.

In the **Federal Register** dated February 14, 1984 (49 FR 5713, Docket No. 81N-0004), FDA published a proposed rule that included provisions for irradiation of certain foods, if the irradiation doses would not exceed 100 kilorads (krad) [150 Gray (Gy)]. In the **Federal Register** dated April 18, 1986 (51 FR 13376, Docket No. 81N-0004), FDA published a final rule regarding irradiation. In each of the documents, FDA discussed the effect on human health of eating irradiated food. In its proposed rule, FDA presented findings to show that irradiated food does not become radioactive. In the final rule, FDA indicated that no commenter on the proposed rule presented any evidence to refute those findings.

(2) *Concern that irradiating papayas could create in the fruit dangerous radiolytic products.* In its proposed rule, FDA demonstrated that chemical differences between irradiated foods processed at less than 100 krad and nonirradiated food are too small to affect the safety of the food.

(3) *Concern that the maximum level of irradiation FDA has approved for irradiating food would be fatal if directed at a human.* In its final rule, FDA acknowledged that human exposure to doses of gamma radiation much lower than those approved for irradiating food would be lethal. At issue, however, is not the effect of human exposure to this level of radiation, but whether irradiating foods causes those foods to become unhealthful. Under this final rule, papayas, not humans, will be exposed to specified levels of radiation.

(4) *Concern that certain studies seem to show that animals fed irradiated food have abnormally high rates of testicular tumors, kidney disease, death in offspring, lessened life spans, and an abnormal increase in white blood cells.* FDA, in its final rule, addressed each of the above concerns, except the one concerning an abnormal increase in white blood cells. Commenters on the FDA proposed rule cited specific studies that the commenters said showed links between irradiation and each of the above conditions. In its final rule, FDA cited extensive reviews it had made of each of the studies cited. In each case, FDA found either that the study was flawed or that the commenter had misinterpreted the results of the study. In each case, FDA concluded that concern over the adverse effects was not substantiated. The commenter on

our proposed rule who was concerned that irradiated food might cause an abnormal increase in white blood cells cited no studies or evidence to support that concern, and we are not aware of any studies that have reached that conclusion.

(5) *Concern that irradiation of food can produce aflatoxin contamination in food.* Several commenters on the FDA proposed rule cited a series of studies that they said showed that irradiation of certain foods can produce aflatoxin contamination of those foods. In its final rule, FDA indicated that, upon review, it had found that the studies referred to did not replicate actual food handling practices and that it has no evidence to conclude that food irradiated and stored under normal handling practices would show increased aflatoxin production.

(6) *Concern that pesticide residues in irradiated fruit could become altered.* Based on its own studies, FDA concluded in its final rule document that the sum of all radiolytic products produced by irradiation at 100 krad would be no more than 30 parts per million in food. Therefore, the cumulative concentration of all radiolytic products from a pesticide residue would correspond to a concentration of less than 30,000 times smaller than the pesticide residue itself. Because low levels of pesticide residues are expected in food, FDA believes that the total amount of radiolytic products from a pesticide chemical that might be consumed with irradiated foods would be virtually nil. FDA therefore concluded that the potential toxicity of each radiolytic product from a pesticide chemical residue on foods would be negligible and that the pesticide residues do not pose a hazard to health.

(7) *Request that more testing be done concerning the long-term effects on humans of eating irradiated food.* In 21 U.S.C. 321(s), a source of radiation is considered to be a "food additive." In its final rule, FDA indicated that one of its responsibilities is to reduce uncertainty about the safety of an additive to the point where the agency can reasonably conclude that no harm will result from the additive's proposed use. In its final rule, FDA indicates that it "believes that the substantial amount of available toxicological information supports the conclusion that the irradiation of food [as set forth in the FDA final rule] is safe." FDA therefore concluded that "there is no basis for delaying for decades a decision to regulate food irradiation to conduct the type of study suggested by [commenters on the FDA proposed rule.]"

(8) *Concern that irradiated food may suffer a reduction in vitamins and minerals.* In its proposed rule, FDA discussed the possible destruction of nutrients in irradiated food. The agency concluded that the available literature indicates no nutritional differences between unirradiated food and food irradiated at levels below 100 krad.

(9) *Concern that insects and bacteria in or on food subjected to irradiation could mutate and become resistant to irradiation.* In response to a comment on its proposed rule, FDA addressed the concern that irradiation could cause mutant bacteria. Because both bacteria and insects are highly evolved organisms, we believe FDA's response can be extended to address also the potential mutation of insects. In its final rule, FDA writes:

> Mutants produced during the irradiation of food are essentially the same as those that occur naturally—the only real difference is in the rate at which mutations occur. Radiation may increase the frequency of mutations and thereby increase the bacteria or viruses that would occur otherwise through natural evolutionary processes. However, there is no reason to expect that the resulting mutant would be different or more virulent than those created in nature.
>
> Because bacteria are highly evolved organisms, well adapted to their environment, the vast majority of mutations would tend to be detrimental for the organisms. Mutant organisms that are more radiant resistant than their parents may survive and be present in an environment exposed to frequent sublethal doses of radiation. Such radiation-resistant bacteria, however, would be a problem only if irradiation were essential to produce a safe food. This is not the case, and not permitting the use of food irradiation would not prevent such a problem from occurring.
>
> Furthermore, the agency does not believe that such radiation-resistant bacteria or viruses, if they were produced, would be more resistant to other antibacterial agents. Although it is possible that specific conditions and indiscriminate irradiation might produce mutants, the agency concludes that the possibility that such mutants would be more virulent or more harmful is remote.

(10) *Concern that irradiation reduces the quality of citrus and other foods subjected to irradiation.* One commenter on our proposed rule cited three research sources that indicated (1) reduction in product quality in irradiated citrus fruit; (2) a need for more data on thiamine loss in irradiated cereal crops; (3) stimulation of ripening in some fruits, with an accompanying stimulation in ethylene production; and (4) irradiation induced changes in the beta-carotene content of papaya.

Because the first two quality loss issues cited here concern foods other than papayas, we will not respond to them in this document. With regard to the third issue, while some studies indicate a stimulation of ripening in some fruits, studies conducted at the University of Hawaii and elsewhere [2] indicate that irradiation of papayas actually delays senescene (aging) of that fruit. The study cited regarding beta-carotene showed no change in beta-carotene content in papayas that were irradiated at the levels prescribed in the proposed rule.

(11) *Concern that the irradiation of fruit is not economically feasible.* This final rule is intended to expand the number of treatment methods available to Hawaiian papaya growers who ship their fruit to the United States mainland and territories. Each grower has the option of determining whether the irradiation treatment is economically feasible, and has the option of using other approved treatment methods.

(12) *Concern that the transport of nuclear materials and the operation of irradiation facilities would pose environmental dangers.* The Nuclear Regulatory Commission (NRC) is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. We must assume that any facility approved for operation by NRC will meet all necessary safety standards.

(13) *Request that papayas subjected to irradiation be labeled as such at the retail level.* Recognizing consumer interest in whether food has been irradiated, FDA in its final rule requires that the wholesale label of irradiated food bear either the statement "Treated with radiation, do not irradiate again," or the statement "Treated by irradiation, do not irradiate again." FDA further requires that a retail label bear a specified logo and either the statement "treated with radiation," or the statement "treated by irradiation."

No Changes Based on Above Comments

No arguments were raised in the comments discussed above that warrant abandonment of our proposal to allow irradiation of papayas as a quarantine treatment. Therefore, we are making no changes as a result of those comments.

Comments in Favor with Suggested Modifications

Five commenters were in favor of our proposed rule with some modifications.

In our document of January 5, 1987, we proposed to require that an indicator (label dosimeter) that undergoes a physical or chemical change when

[2] For additional information, contact Technology Analysis and Development Staff, PPQ, APHIS, USDA, Federal Building, Hyattsville, Maryland 20782.

exposed to radiation would have to be permanently attached to each carton of papayas and remain attached while in interstate commerce. One commenter objected to that proposed requirement on the grounds (1) that a dosimeter that visibly changes at the 10–15 krad dosage range may not be commercially available, and may be prohibitively expensive if it does become available; (2) that a user of a Hawaii papaya irradiator who elects to use a 50–100 krad dose to extend the market life of papayas would be able to guarantee that a 15 krad dose was delivered to the papayas, even without a dosimeter; (3) that a dosimeter as proposed would add nothing of value over and above established dose-mapping procedures plus constant source geometry, and product loading configuration, such as are already being carried out for medical devices; and (4) that visual or instrumental observations of dosimeters on exterior individual cartons irradiated and handled as full pallet-loads would probably add significant handling and labor costs, with no real gain in information value.

We do not agree with the suggestion that it is not necessary to require the use of a dosimeter to indicate that papayas have received the required irradiation. There is no evidence to suggest that a dosimeter as required will not be commercially available to all users of Hawaii papaya irradiators. While standard industry procedures may help ensure that papayas have been irradiated, there is no way to visually or chemically analyze a papaya to guarantee that it has been irradiated. Similary, while increased dosages to extend market life may implicitly ensure dosages of at least 15 krad in some cases, the only guarantee that irradiated papayas have received a 15 krad dosage in all cases is to require a device that indicates the dosage received. Any expense to a marketer related to purchasing, applying, and reading the dosimeters would have to be factored into a marketer's analysis of whether the irradiation treatment option is preferable to other treatments currently allowed. However, we agree that if a pallet-load of papayas remains intact from the time it is irradiated until it leaves Hawaii, with no cartons added or removed from the pallet-load during that time, it would not be necessary to attach a dosimeter to each carton. A minimum of two dosimeters attached to the pallet-load, on opposite sides of the pallet-load, would be sufficient to indicate whether the product has received the required radiation. Therefore, we are including such a provision in this final rule. To ensure that the pallet-loads remain intact, we are requiring that they be wrapped in one of the following ways and remain so wrapped until they leave Hawaii: (1) With polyethylene sheet wrap; (2) with net wrapping; or (3) with strapping so that each carton on an outside row of the pallet-load is constrained by a metal or plastic wrap.

A second commenter objected to our specifying a "label dosimeter" on the grounds that it implied the required use of a specific type of dosimeter, when other dosimeters may work as well or better in the food irradiation arena and may have a longer history of use. We do not intend to limit a marketer to using any specified type of dosimeter, as long as the one chosen can be affixed to a carton or pallet-load of cartons and can reliably indicate that the carton or pallet load has been irradiated at 15 krad. For this reason, we are deleting our reference to the term "label dosimeter" in the final rule and are referring instead to "a dose indicator that can demonstrate irradiation of a minimum of 15 krad."

One commenter objected to the wording of our requirement that an irradiation treatment facility be constructed so as to provide physically separate locations for treated and untreated fruit. The commenter suggested that a barrier should provide physical separation to prevent inadvertent mixing of treated and untreated fruit only during storage periods at the facility. The commenter reasoned that cartons that travel on a conveying mechanism conveyor could pass through areas that would otherwise be separated, provided that the conveying mechanism could receive the product only from the incoming area of the warehouse and that the product could leave the conveying mechanism only on the outgoing area of the warehouse. We recognize that it is likely that some irradiation facilities will be constructed to allow for multiple trips of the same cartons through the irradiation chamber. In those cases, treated cartons might transit areas where untreated cartons are present in order to reenter the irradiation chamber. If the conveyor system is set up to ensure that treated and untreated cartons cannot be commingled in a transit area, there would be virtually no risk of untreated papayas inadvertently being shipped from the warehouse. Therefore, we are providing in this final rule that an irradiation facility must be constructed to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated.

Two commenters agreed with our proposal to allow irradiation as a quarantine treatment of papayas from Hawaii, but suggested that irradiation treatment be extended to apply as well to other specified fruits and vegetables. Although it is our intent to expand irradiation as an allowable quarantine treatment to other fruits and vegetables, we are limiting the use of irradiation to papayas at this time. APHIS's responsibility is to implement treatments as recommended to us by the Agricultural Research Service (ARS) of the United States Department of Agriculture. Currently, ARS is examining the feasibility of using irradiation as a quarantine treatment for fruits and vegetables other than papayas, but has not yet recommended the treatment for anything other than papayas.

One commenter suggested that we raise the minimum dosage of radiation for papayas from 15 krad to 26 krad. At 15 krad, any fruit fly larvae that emerge as adults would have crumpled wings and be incapable of flight, and therefore be incapable of spreading. The commenter suggested that a dosage of 26 krad would ensure that no fruit fly larvae would even emerge from eggs, and the percentage of marketable fruit would thus be increased. We are making no changes based on this comment. Our responsibility is to prevent the spread of pests, and our policy has been to do so with treatments using the minimum dosage necessary. By requiring a minimum dosage of 15 krad, we are preventing emergence of fruit flies capable of reproduction, and are thus satisfying the quarantine requirements. Requiring a level of irradiation higher than 15 krad would demand that papayas be irradiated for longer periods of time. This would involve greater expense to the industry, with no increase in protection against pests. If members of the industry decide that irradiation at 26 krad is commercially more desirable than irradiation at 15 krad, they are free to use the higher levels.

Comments That Addressed Supplementary Information

The above comments addressed provisions we specifically included in the regulation portion of our proposed rule document. Additionally, several commenters addressed items that we did not specifically include in the proposed regulations, but that were included in the supplementary information in the preamble of our

document. Because the preamble embodies our intent with regard to the proposed regulations, it is appropriate for us to address comments concerning that preamble material, and to make changes as necessary in the final rule to reflect comments on the preamble material. Additionally, we are including certain material in the final rule that was specified in the proposed rule preamble but not in the proposed rule itself.

In our preamble material, we specified that, to be approved, an irradiation facility must provide an automatic system, such as a conveyor system, to move papayas through the irradiation chamber. We indicated that the automatic system must be failsafe in the sense that once the commodity enters the irradiation chamber, it will pass through at a predicted speed, will not be able to exit without receiving the required treatment, and will not be able to return to the incoming area.

Two commenters suggested that alternative methods of moving papayas into and out of the irradiation chamber, such as a "batch" system, would work just as well as an automatic conveyor system. Upon review of the comments, we believe that it is not necessary to specify an automatic conveyor system to ensure the prescribed irradiation of papayas. Because we are requiring either that a dosimeter be attached to each carton or that two dosimeters be attached to each intact-pallet load of cartons, we can accurately determine whether the fruit has received the necessary dosage.

One commenter objected to the provision specified in the summary to our proposed rule that irradiation be applied so that the absorbed dose is no less than 15 krad in a single treatment. This commenter suggested that the term "single treatment" should not preclude product repositioning or transfer operations in between sequential trips through the irradiator. The commenter stated that some irradiation conveyance systems that are currently in use in the medical products industry operate so that (1) the carrier makes one complete trip through the irradiator, (2) some of the product is removed and held for shipping, (3) the remaining product is either automatically or manually repositioned in the same or different carrier, (4) some new product is placed in the carrier, and (5) the process is repeated.

We recognize that some irradiation facilities may choose to apply the prescribed irradiation by means of sequential passes through an irradiation chamber. Such a system is an effective method of exposing papayas to the required minimum of 15 krad. Consequently, we are not including the phrase "in a single treatment" in the final rule.

One commenter objected to the provision in the supplementary information that one of our inspectors must be notified before such treatment. The commenter said (1) that the term "each treatment" is vague; and (2) that any notification of our inspectors would be unnecessary. The commenter indicated that some medical product irradiation facilities have the authority to start up or close down a facility at their discretion, without relying on permission from the FDA.

Because we agree that the term "each treatment" could be interpreted several ways, we are amending the final rule to clarify our intent. In the case of a facility that operates continuously, we are requiring that the operator of the facility notify us at least 24 hours before each day the facility will operate. The operator of a facility that operates only periodically must notify us, at least 24 hours before irradiation treatment is to be started, of the hours during which it will take place. A footnote (footnote 3) has been added to indicate where information can be obtained for contacting local APHIS offices. In noting that facilities for irradiation of medical products do not rely on FDA approval for each start-up, the commenter erroneously concluded that we were proposing to require APHIS approval each time irradiation treatment commences. We will leave the scheduling of treatments to the operators of facilities, and we are requiring notification to allow us to be present to monitor these treatments.

Several commenters expressed concern regarding our proposal that each carton of papayas be stamped "Treated USDA, APHIS." In our proposal, we specified that this stamp would have to be applied after treatment. The commenters stated that requiring each carton to be stamped would require either that all pallet-loads of cartons be broken down, or that some new configuration of stacking on pallets be devised to allow a stamper access to each carton.

One commenter suggested, as a way of solving the palletization problem, that each carton earmarked for irradiation be stamped as it comes off the packing line, before irradiation. The commenter suggested that the carton then be followed with appropriate quality control and documentation to ensure that it was actually irradiated. We are making no changes based on the suggestion that cartons be stamped before irradiation. We do not believe that stamping cartons of papayas before irradiation would ensure that the cartons actually received the treatment indicated by the stamp. However, with regard to the problem of palletization, as we stated above, we are establishing dosimeter requirements for pallet-loads of papayas that remain intact from the time they are irradiated until they leave Hawaii. If those pallet-loads are wrapped as specified above in our discussion of dosimeters, we will allow them to move from Hawaii without each carton being stamped, as long as a label bearing the impression, "Treated USDA, APHIS," is affixed to the pallet-load and remains attached until the pallet-load leaves Hawaii. The impression on the label will have to measure at least 4 x 11 inches to ensure ready visibility.

Approval of Facilities

We are including in this final rule procedures regarding approval of a papaya irradiation facility, and procedures regarding denial or withdrawal of approval. We are adding these provisions to make clear to the public internal agency policy regarding these areas.

Miscellaneous

We are making several nonsubstantive editorial and paragraph designation changes in the final rule for purposes of clarity, including the placement of all requirements regarding recordkeeping into § 318.13–4g(b)(10). We are also redesignating current § 318.13–4g as § 318.13–4h.

Additionally, we are adding language to clarify that "normal business hours," as referred to in § 318.13–4g(a)(10), constitute the period between 8:00 a.m. and 4:30 p.m., Monday through Saturday, except holidays. We are also adding an address in a footnote to indicate where to send requests for approval of cartons for use in shipping irradiated papayas.

Additionally, we have replaced the term "Deputy Administrator" wherever it appeared in the proposal with the term "Administrator," and have replaced the term "Plant Protection and Quarantine" wherever it appeared in the proposal with the term "Animal and Plant Health Inspection Service." We have made these changes to reflect internal agency policy. We have also added a definition of the term "Administrator," and have placed the definitions in § 318.13–1 in alphabetical order.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule expands the number of quarantine treatment methods available to Hawaiian papaya growers who ship their fruit to other parts of the United States. It places no new restrictions on these growers.

Until this rule becomes effective, there are only two approved treatments available for Hawaiian papayas. These treatments are normally applied by the exporter or packer at his or her premises under compliance agreement or under APHIS supervision.

Because of the anticipated construction costs of an irradiation facility, as well as high operating costs, an independently operated facility is likely to be constructed. This facility could provide service to any or all papaya exporters. Also, because of the high costs of building and operating the facility, the final cost of treating the papayas will likely be higher than with the treatments currently being used. We cannot determine with certainty whether the quality of the irradiated papayas or any increase in shelf life will offset the increased treatment costs. However, exporters will still have the option of using the less expensive double dip treatment of vapor heat treatment if they choose.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

While this rule requires records to be made available for inspection, this imposes no new recordkeeping requirements on papaya shippers who would use irradiation treatment. The FDA's final rule requires that records of irradiation treatments be kept and made available to FDA. This is necessary because no chemical or physical method now exists for assaying how much radiation a food has received. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this rule under § 318.13–4g have already been approved for the FDA final rule by the Office of Management and Budget (OMB) and have been given the OMB control number 0910–0186.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we have submitted the information collection provisions in this rule to the Office of Management and Budget (OMB) for approval. You may send written comments on these provisions to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to Helene R. Wright, Director, Regulatory Analysis and Development, Policy and Program Development, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

National Environmental Policy Act

We have completed an environmental assessment regarding this rule. A notice regarding the conclusions of the environmental assessment appears in the "Notices" section of this issue of the **Federal Register**, under the heading "Availability of Environmental Assessment and Finding of No Significant Impact Relative to Low Dosage Gamma Radiation of Papayas."

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 318

Agricultural commodities, Fruit, Guam, Hawaii, Papayas, Plant diseases, Plant pests, Plants (agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, 7 CFR Part 318 is amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, 371.2(c).

2. In § 318.13–1, the paragraph designations are removed; the definitions are placed in alphabetical order; and the following definition is added in alphabetical order to read as follows:

§ 318.13–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the Animal and Plant Health Inspection Service to whom authority has been or may be delegated to act in the Administrator's stead.

* * * * *

§ 318.13–4g [Redesignated as § 318.13–4h]

3. Section 318.13–4g is redesignated as § 318.13–4h.

§ 318.13–13 [Amended]

4. In § 318.13–13, footnotes "4" and "5", and the references to those footnotes, are redesignated as "7" and "8" respectively.

§ 318.13–5 [Amended]

5. In § 318.13–5, footnote "3", and the reference to that footnote, is redesignated as "6".

§ 318.13–4h [Amended]

6. In newly redesignated § 318.13–4h, footnote "2", and the reference to that footnote, is redesignated as "5".

7. A new § 318.13–4g is added to read as follows:

§ 318.13–4g Administrative instructions approving an irradiation treatment as a condition for certification of papayas for movement from Hawaii.

(a) *Approved irradiation treatment.* The Administrator hereby approves irradiation, carried out in accordance with the provisions of this section, as a treatment for papayas. Papayas treated and handled as provided in this section may be certified for movement from Hawaii.

(b) *Conditions for certification.* Irradiated papayas may be certified for movement from Hawaii only if the following conditions are met:

(1) *Location.* The irradiation treatment is carried out in Hawaii.

(2) *Approved facility.* The irradiation treatment facility and treatment protocol are approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must meet the following conditions:

(i) Be capable of administering a minimum absorbed ionizing radiation

dose of 15 kilorads (150 Gray) to the papayas.[2]

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence six or more feet high to prevent transfer of cartons.

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 318.13–4(d) of this subpart.

(3) *Treatment monitoring.* Treatment is carried out under the monitoring of an inspector. This monitoring will include inspection of treatment records and unannounced inspectional visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations.[3] Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[3]

(4) *Packaging.* Papayas are packaged in cartons approved by the Administrator.[4] The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.

(5) *Dosage.* Papayas receive a minimum absorbed ionizing radiation dose of 15 kilorads (150 Gray).[2]

(6) *Dose Indicator.* One of the following conditions is met:

(i) A dose indicator that can demonstrate irradiation of a minimum of 15 krad and that undergoes a physical or chemical change during irradiation is attached to each carton of papayas before treatment and remains attached while in interstate commerce; or

(ii) A minimum of two dose indicators as described in paragraph (b)(6)(i) of this section are attached to opposite sides of a pallet-load of cartons of papayas before treatment and remain attached while in interstate commerce. The pallet-load must be wrapped, from the time it leaves the irradiation facility until it leaves Hawaii, in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(7) *Treated stamp.* Each container of irradiated papayas that is not part of a pallet-load as specified in paragraph (b)(6)(ii) of this section is identified with the stamped impression "Treated—USDA, APHIS". The impression must measure at least 1.5 x 2.5 inches and must be applied after treatment and before the carton leaves the irradiation facility.

(8) *Labeling of pallet loads.* Each pallet-load of irradiated papayas that is wrapped according to paragraph (b)(6)(ii) of this section is identified with a label bearing the impression "Treated—USDA, APHIS." The impression must measure at least 4 x 11 inches and must be affixed to the product after irradiation and before the pallet-load leaves the irradiation facility.

(9) *Certification for movement.* Papayas treated in accordance with this subpart are certified for movement from Hawaii in accordance with § 318.13–4(b) of this part.

(10) *Records.* Records or invoices for each treated lot are made available for inspection by an inspector during normal business hours. (8:00 a.m. to 4:30 p.m., Monday through Saturday, except holidays.) A papaya irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(c) *Request for approval and inspection of facility.* Persons requesting approval of a papaya irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Administrator, c/o Science and Technology, APHIS, USDA, Room 228, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Before the Administrator determines whether a papaya irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility, to determine whether it complies with the standards of paragraph (b)(2) of this section.

(d) *Denial and withdrawal of approval.* (1) The Administrator will withdraw the approval of any papaya irradiation treatment facility when the papaya irradiation processor requests in writing the withdrawal of approval.

(2) The Administrator will deny or withdraw approval of a papaya irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the papaya irradiation processor in writing of the reasons for the proposed action and provide the papaya irradiation processor with an opportunity to respond. The Administrator will give the papaya irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the papaya irradiation processor. In the event of oral notification, written confirmation will be given to the papaya irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(e) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the Tri-fly complex. From the literature available, papayas are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for insuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible to insure that irradiated foods are safe and wholesome for human consumption.

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[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR Part 179.

[3] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories. The addresses and phone numbers of local offices may also be obtained from Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

[4] Send requests for approval of cartons, together with a sample carton, to Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

Done in Washington, DC, this 3rd of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-267 Filed 1-5-89; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-1524]

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: December 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a final regulation addressing certain aspects of the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions"). On July 20, 1988 the Board issued a temporary regulation that placed certain restrictions on actions that insured institutions that did not currently meet their minimum or fully phased-in regulatory capital requirements may take regarding such stock. This temporary regulation expires on December 31, 1988.

Today, the Board is adopting a final rule concerning the purchase and sale of Freddie Mac stock by insured institutions that fail to meet either their minimum or fully phased-in regulatory capital requirements. The final regulation provides that any insured institution failing to meet its minimum regulatory capital requirement may not buy or sell Freddie Mac preferred stock without obtaining prior approval from its Principal Supervisory Agent ("PSA") or his designee, subject to the concurrence of the Office Regulatory Activities ("ORA"). It also sets general factors to be contained in an institution's written application for approval that the PSA will consider in determining whether to grant such approval. Additionally, the final regulation restricts any insured institution not meeting its fully phased-in capital requirements from taking certain actions as a result of any purchase or sale of Freddie Mac stock that might adversely affect its ability to meet its fully phased-in capital requirement, without first receiving prior approval from its PSA.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-6445; or Richard A. Katz, Staff Attorney, (202) 377-7037, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Michael P. Scott, Policy Analyst (202) 331-4590, Office of Regulatory Activities, 801 17th Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit holders of the preferred stock of Freddie Mac to sell such stock to the general public as of January 1, 1989. Before this time, pursuant to a previous resolution creating the class of preferred stock covered by the July 13 action, such stock could only be held by stockholders of a Federal Home Loan Bank in connection with the collateral for advances, the FSLIC in connection with the receivership or insolvency of a holder of the preferred stock, a pre-approved market maker or nominee thereof, or a specialist on any national securities exchange. Additionally, single holders of such preferred stock were limited in the maximum amount of shares each could hold to 150,000, subject to certain grandfathering provisions. Freddie Mac's Board of Directors also acted on July 13, 1988, to increase the maximum number of shares that any single holder could own from 150,000 to 600,000 by January 1, 1989. The Freddie Mac Board of Directors issued a resolution on August 30, 1988, ratifying its decision of July 13, 1988.

Currently, Freddie Mac preferred stock is primarily held by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. In general, the Board believes that any decision to purchase or sell Freddie Mac stock both before and after January 1, 1989, is best left to the sound business judgment of insured institutions themselves. However, on July 22, 1988 the Board adopted a temporary regulation affecting the purchase and sale of, and use of proceeds from the sale of, Freddie Mac stock by certain insured institutions based upon two specific concerns.

First, the Board believes that institutions not currently meeting their minimum regulatory capital requirements as set forth in 12 CFR 563.13 and 12 CFR 563.14 require closer supervision as a result of their impaired capital position. The volatility accompanying the removal of the restrictions on ownership and transferability of Freddie Mac preferred stock may particularly affect those insured institutions.

Second, the Board believes that any gains from the sale of Freddie Mac stock should generally be applied to improve the capital position of insured institutions not yet meeting their fully phased-in capital requirements as set forth in 12 CFR 563.13 and 12 CFR 563.14. As the Board has indicated in the past, it is important that insured institutions raise their capital levels as rapidly as possible in order to provide adequate protection to insured institutions, their depositors, and the FSLIC fund. *See* Board Res. No. 88-1342, 53 FR 51800, 51814 (December 23, 1988); Board Res. No. 88-583, 53 FR 27814 (July 22, 1988); Board Res. No. 87-661, 52 FR 23845 (June 25, 1987); Board Res. No. 86-857, 51 FR 33571-73 (September 22, 1986); Board Res. No. 86-426, 51 FR 16550, 16552 (May 5, 1986).

To address these specific concerns without impairing the ability of the majority of insured institutions who are meeting their capital requirements, the Board determined to adopt a temporary rule affecting only institutions not meeting their capital requirements. The temporary rule was intended to ensure that supevisory review occurred before these institutions took certain actions in regard to Freddie Mac stock that might affect their portfolios or capital. The Board requested comments on the temporary rule, which is scheduled to expire on December 31, 1988. *See* Board Res. No. 88-583, 53 FR 27814 (July 22, 1988).

A. Discussion of the Comments

The Board received a total of eight comments. Four of these letters were from insured institutions, three were received from industry trade associations, and one from a law firm representing several insured institutions. Although all but one of these comment letters were supportive, several criticisms and suggestions were offered, which are discussed in greater detail below.

1. The need for a Final Rule

One commenter opposed replacing the temporary regulation with a final rule. This commenter asserted that a "permanent" rule was unnecessary because Freddie Mac preferred stock would no longer be volatile once it could be publicly traded.

The Board concludes, however, that a final rule is necessary because there is no certainty whether or not the market

for Freddie Mac preferred stock will be volatile once the stock can be publicly traded. For this reason, the Board believes that a final rule addressing the same concerns as the temporary regulation remains necessary for the same reasons as prompted the temporary regulation. As discussed more fully in Part B below, however, in 1989 the Board will be examining issues affecting Freddie Mac stock and its possible volatility in its review of its equity-risk investment and capital regulations. As a result of such review it may revisit the necessity for this rule and take any appropriate action in the final equity-risk investment regulation to modify or terminate any unnecessary provisions.

2. Restrictions on the Sale of Stock

Three commenters opposed the restrictions on the sale of Freddie Mac preferred stock by insured institutions that fail to meet their minimum regulatory capital requirements. These three commenters did, however, see merit in placing restrictions on the use of the proceeds from such sales by insured institutions whose capital structure is impaired. These commenters asserted that the sale of Freddie Mac preferred stock would bolster the capital of such institutions. They doubted that the unrestricted sale of such stock by insured institutions that fail to meet their minimum capital requirements would harm either depositors or the FSLIC fund. All three of these commenters indicated their belief that Freddie Mac preferred stock was a sound and conservative asset and that restrictions on its sale would distort its optimal market value.

The Board declines to remove from the final rule the restriction on the sale of Freddie Mac preferred stock by insured institutions failing to meet their minimum regulatory capital requirements. The Board continues to believe that the impaired capital status of such insured institutions warrants supervisory scrutiny of certain business decisions. The PSA for the institution is best able to determine whether an insured institution's decision to sell Freddie Mac preferred stock may have adverse consequences for the institution and ultimately the FSLIC as insurer of the institution.

The Board rejects the contention that the sale of Freddie Mac preferred stock would never have an adverse effect on insured institutions that fail to meet their minimum regulatory capital requirements. A decision to sell the stock in a widely fluctuating market may have a significant negative impact on the capital position of such an institution. By retaining this restriction in the final regulation, determinations can be made on a case-by-case basis whether the sale of Freddie Mac preferred stock by such institutions enhances the capital position of such institutions while simultaneously safeguarding the positions of the depositors and FSLIC. The Board does not believe that this requirement of supervisory review distorts the market value of Freddie Mac stock in any appreciable manner. The PSA can approve applications by insured institutions failing to meet their minimum regulatory capital requirements to sell their Freddie Mac preferred stock if such sale is determined to be in the overall best interests of the institution.

3. Restrictions on the Purchase of Stock

One of the commenters opposed the general requirement that insured institutions that fail to meet their minimum capital requirements must obtain PSA approval before purchasing Freddie Mac preferred stock. This commenter believed that Board has ample authority under other regulations to restrict the purchase of Freddie Mac preferred stock on a case-by-case basis. This commenter also thought that the regulation's restriction on the sale of Freddie Mac preferred stock or the use of proceeds therefrom makes a restriction on the purchase of such stock unnecessary.

The Board declines to remove from the final rule the restriction on the purchase of Freddie Mac preferred stock by institutions that fail to meet their minimum regulatory capital requirements. The Board believes that the elimination of the ownership and transferability restrictions that had previously applied to Freddie Mac preferred stock may subject the value of those securities to increased market fluctuations. This could, in turn, have a significant impact on the financial condition of insured institutions holding such stock. To the extent that institutions can immediately increase their holding of Freddie Mac preferred stock, the results of potential market fluctuations in the value of this stock take on more significant consequences.

With the removal of the previous Freddie Mac restriction significantly limiting the amount any single holder of preferred stock could own, insured institutions can substantially increase their holdings of Freddie Mac preferred stock. At the same time, the value of this stock may be subject to unprecedented volatility. The capital position of institutions that are not currently meeting their minimum capital requirement may be particularly vulnerable to these variations. The Board continues to believe that before such institutions can significantly alter their holdings of Freddie Mac preferred stock, there must be an opportunity for the institution's PSA to evaluate the potential impact resulting from a change in the level of this type of investment.

4. Restrictions on the Use of Sale Proceeds

Several commenters expressed various opinions about the restrictions that the regulation imposed on the use of the proceeds from the sale of Freddie Mac preferred stock by insured institutions that fail to meet their phased-in regulatory capital requirements. None of the commenters opposed the concept of restricting the use of sale proceeds by such institutions. These commenters, however, suggested various changes to this provision of the regulation.

One commenter suggested that restrictions on the use of capital gains from the sale of Freddie Mac preferred stock should apply only to originally distributed stock and not to stock that was acquired as a result of subsequent purchases. Other commenters requested that the Board either define or remove the term "equivalent action" from the final rule.

The Board believes that the final regulation should apply to the proceeds of all sales of Freddie Mac preferred stock. The suggestion that 12 CFR 565.13(c) should be limited to capital gains from the sale of original stock is inconsistent with the purpose of the regulation. The rule is designed to compel insured institutions that fail to meet their phased-in regulatory capital requirements to apply the sale proceeds to capital reserves. The Board also rejects the contention that the term "equivalent action" is too ambiguous. The term is intended to cover any actions that would result in funds, which would otherwise be applied to capital, being removed from the institution. These actions include dividends, stock repurchases, or other "equivalent actions" that could have similar effect. The Board believes that supervisory review before such action takes effect is important to ensuring that the industry's capital, as well as that of a particular insured institution is increased as rapidly as possible.

5. Procedures for Obtaining PSA Approval

Several commenters expressed concerns that the procedure by which such institutions obtain PSA approval

was too cumbersome. These concerns arise in the context both of institutions that do not meet their minimum regulatory capital requirements and of institutions that fail to meet their phased-in regulatory capital requirements. Some of the commenters expressed their belief that institutions failing to meet their minimum regulatory capital requirements will be unable to obtain either the optimal sale or purchase price in a fast moving market.

The Board received various suggestions for expediting the process by which the PSA considers such applications. One commenter proposed that the final regulation require the PSA to approve or deny an application within ten days of its receipt. Another commenter suggested that the Board carve out a special exception for well-run institutions that fail to meet their regulatory capital requirements. Another commenter suggested that the Board include in the final rule a blanket approval for Freddie Mac transactions of a certain specified size by institutions within certain parameters of meeting their capital requirements. The same commenter also encouraged the Board to add a provision to the final rule to enable the PSA to approve a plan by which a capitally impaired institution intends to sell or purchase Freddie Mac preferred stock over a period of time, so that the institution would not be required to obtain separate approvals for each transaction.

The Board has determined not to amend these pre-approval requirements. As discussed above, the Board believes that such pre-approval is an important tool in the effective supervision of any insured institution not meeting its minimum capital requirements, regardless of its size or recent performance. These factors, among others, may be taken into account by the PSA in its review.

Additionally, experience with the temporary rule has not indicated that substantial delays in approval have, in fact, occurred for approvals or disapprovals of purchases, sales, or use of proceeds. The Office of Regulatory Activities has promulgated guidelines to the PSAs indicating the circumstances under which it will give its prior concurrence to an application regarding a Freddie Mac stock-related transaction. This has streamlined the process, while providing the opportunity for effective supervisory review, providing the PSA with needed flexibility, and simultaneously providing the applicant with the expedient consideration of its application. In this regard, nothing in the regulation prohibits an applicant from structuring its application to indicate a plan to purchase or sell such stock or to issue dividends or take other equivalent action tied to the sale of Freddie Mac stock in a series of transactions over time. The PSA may then make any appropriate decision on such a plan, or any of its constituent parts.

6. Forbearance

Two of the commenters requested the Board to clarify its position on forbearance. The temporary rule provided that an institution that fails to meet its minimum regulatory capital requirements must obtain approval from its PSA, subject to the concurrence of ORA, before selling or purchasing Freddie Mac preferred stock, notwithstanding any previously granted capital forbearances. Additionally, the temporary rule prohibits, except as approved by the PSA, subject to the concurrence of ORA, an insured institution which fails to meet its fully phased-in capital regulatory requirements from declaring a dividend, repurchasing its own stock, or taking equivalent actions, notwithstanding any previously granted forbearance.

One of the commenters requested that the Board distinguish, in its final rule, between capital forbearances that are granted to insured institutions, pursuant to Section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, and its implementing regulation, 12 CFR 563.47 (1988), and those capital forbearances that are granted in the context of a supervisory acquisition pursuant to 12 U.S.C. 1730a(m). In many supervisory acquisitions, FSLIC granted capital forbearances to the acquirer. Generally, the Board recognized in such supervisory cases that the insured institution's failure to comply with capital reserve requirements was attributable to the supervisory transaction, and therefore, the acquirer was granted a forbearance from regulations enforcing the capital or reserve requirements for a specified number of years.

After considering these comments, the Board has decided not to change the provisions in the regulation on capital forbearance. The same rationale applies for requiring a supervisory review before the purchase or sale of Freddie Mac preferred stock or the subsequent use of sale proceeds by any insured institution whose capital structure is impaired for whatever reason. The Board remains concerned with the overall capital position and health of all such institutions, in order to protect both the depositors and FSLIC. The Board believes that the limited, but critical, supervisory review provided in the temporary regulation does not itself forbid any insured institution from taking actions, but merely provides the opportunity for effective supervision of these institutions. The PSA may certainly take the circumstances surrounding forbearances into account in its decision.

B. Description of the Final Rule

For the reasons discussed above, the Board today adopts in final form its temporary rule. The regulation requires that institutions not meeting their minimum capital requirement must submit written applications to their PSAs. It sets forth general factors to be considered by the PSAs when evaluating an institution's application to buy or sell Freddie Mac preferred stock. In making a written application to buy or sell Freddie Mac preferred stock, such institutions will be required to demonstrate the effect that the proposed transaction will have on their overall asset composition. Factors that are to be addressed in applications include, but are not limited to, the effect the proposed transactions will have on an institution's future growth, its risk exposure, and its portfolio diversification. The PSA may require an institution to include in its application any additional information that the PSA may consider relevant to evaluating portfolio risk in connection with the purchase or sale of Freddie Mac preferred stock. If the institution proposes to sell its shares of Freddie Mac preferred stock, it must indicate in its application the manner in which the resulting proceeds are to be used. Moreover, it must comply with any conditions imposed by the PSA.

In separate but related actions, the Board is currently in the process of reviewing both its regulatory capital and equity-risk investment regulations. *See* Board Res. No. 88–1342, 53 FR 51800 (December 23, 1988) (regulatory capital); Board Res. No. 88–1393 (December 22, 1988) (equity-risk investments). In both proposals, the Board is specifically requesting comment on whether the recent changes affecting Freddie Mac preferred stock should affect the treatment of the stock under such regulations. Under the current equity-risk regulation, for example, Freddie Mac stock is exempted from the definition of "equity security" for purposes of calculating an institution's aggregate equity-risk investments. *See* 12 CFR 563.9–8 (b)(2)(1988). The Board is seeking comment on whether the removal of the restrictions on the ownership and transferability of such

stock now makes it substantially similar to other equity securities and whether it should now be treated as such for purposes of the equity-risk investment regulation. The treatment of such stock under that regulation may also affect the amount of capital that insured institutions must hold against such stock holdings. The Board anticipates that it will complete final action in both of these critical areas before the end of 1989. These actions may provide protection against the problems addressed by the purchase and sale restrictions on Freddie Mac stock. If the final regulations adopted in those areas fully address the Board's concerns about the effects of the potential volatility of Freddie Mac stock on institutions that fail to meet minimum regulatory capital requirements, the Board may take action at that time to modify or terminate the provisions regarding purchase and sale of such stock contained in the final regulation adopted today.

Separate and apart from the restrictions applying to those insured institutions not meeting their minimum capital requirements, the Board believes that certain restrictions may be appropriate for institutions not currently meeting their fully phased-in capital requirements as set forth in 12 CFR 563.13 and 563.14. The Board believes that the opportunity for effective supervisory input is important before such institutions declare dividends or take other similar actions as a result of any gains on any sale of Freddie Mac stock because such actions may potentially delay the date institutions attain their fully phased-in capital requirements. As noted above, the Board continues to believe that it is in the best interests of insured institutions, their depositors, and the FSLIC fund that all insured institutions move as quickly as is reasonable to reach their fully phased-in capital levels. Furthermore, given that the gains on the sale of Freddie Mac preferred stock are not likely to be recurring income, the Board believes that such gains should be used to augment capital.

Therefore, the Board has decided to retain the requirement that institutions not meeting their fully phased-in capital requirement that sell shares of Freddie Mac preferred stock must exclude the gain on the sale of these shares from earnings in calculating allowable dividends under the Board's regulations without prior approval by their PSA. Additionally, because certain other actions in connection with gains from the sale of Freddie Mac preferred stock, such as implementation of a stock repurchase program, may have identical adverse consequences on or for an institution's financial condition and may delay the institution's attainment of its fully phased-in capital requirement, the same prior approval is required for any such action. *Cf.* Board Res. No. 88-331, 53 FR 2477 (January 28, 1988) (restriction on repurchase of stock of recently converted insured institutions). The Board contemplates that among the factors the PSA will take into account in determining whether to approve a dividend, stock repurchase plan, or any equivalent action based upon proceeds from the sale of Freddie Mac stock is whether such proceeds reflect the one-time-only restrictions on originally distributed Freddie Mac stock or from gains in the ordinary course of business on the sale of subsequently purchased stock.

The Board has therefore determined that the final regulation adopted today will help to ensure that institutions that are failing their regulatory capital requirement buy and sell Freddie Mac preferred stock in a manner consistent with principles of safety and soundness and that adequate supervisory input is provided before institutions take certain actions as a result of gains from any sale of Freddie Mac stock that might adversely affect their ability to attain their fully phased-in capital requirements as expeditiously as possible.

Pursuant to 5 U.S.C. 553(b) and 12 CFR 508.14, the Board hereby finds that good cause exists for making this final rule effective January 1, 1989, rather than the usual thirty days following publication in the Federal Register. The temporary rule it replaces expires December 31, 1988. If the rule were not made effective as of January 1, 1989, there would be a lapse in the Board's ability to supervise institutions with impaired capital. Because the final rule is identical to the temporary rule that has been in effect since July 22, 1988, no delay is necessary to allow institutions to become familiar with the rule's provisions. Therefore, good cause exists for dispensing with the thirty-day delay of effective date.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION**".

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION**".

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board has drafted the final rule to affect only those insured institutions, regardless of size, that because of their levels of regulatory capital are a matter of particular regulatory and supervisory concern. The final rule will not have a disproportionate impact on small institutions.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 47 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.13-3 to read as follows:

§ 563.13-3 Sale of Federal Home Loan Mortgage Corporation Preferred Stock.

(a) An insured institution that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forebearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities. The Principal Supervisory Agent or his designee, may impose any conditions he deems appropriate in granting such approval, subject to the concurrence of the Office of Regulatory Activities.

(b) An insured institution that fails to satisfy the regulatory capital requirement set forth in §§ 563.13 and 563.14 of this subchapter shall make written application to the Principal Supervisory Agent for permission to buy or sell preferred stock of the Federal

Home Loan Mortgage Corporation. The written application shall provide the Principal Supervisory Agent or his designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the institution's portfolio, as well as any additional information which the institution may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the institution's portfolio, the Principal Supervisory Agent or his designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the institution's asset portfolio, the institution's growth plans, the likely effect on the institution's liquidity, as well as any additional relevant information the Principal Supervisory Agent or his designee may seek in evaluating overall portfolio risk.

(c) Except as approved by its Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities, an insured institution that fails to satisfy its fully phased-in regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forebearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock from its earnings.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-232 Filed 1-5-89; 8:45 am]

BILLING CODE 6720-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 366

Collection of Debts by Federal Tax Refund Offset

AGENCY: Railroad Retirement Board.

ACTION: Temporary rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations by adding Part 366 to establish a procedure whereby delinquent debts owed to the Board will be referred to the Internal Revenue Service for collection by offset against Federal income tax refunds. These regulations are being issued pursuant to 31 U.S.C. 3720A, which authorizes Federal agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. These regulations affect taxpayers who made an overpayment of taxes and who owe a past-due legally enforceable debt to the Board resulting from erroneous benefit or annuity payments made under statutes administered by the Board. These regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1988, and on or before January 10, 1994.

EFFECTIVE DATE: These regulations are effective January 6, 1989, and expire January 11, 1994.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: Title 31 U.S.C. 3720A authorizes the Internal Revenue Service to reduce a refund of a taxpayer's overpayment of tax by the amount of any legally enforceable debt which is owed to a Federal agency and is at least three months overdue. Section 3720A also requires the agency to give taxpayer-debtors at least 60 days notice of the agency's intention to use the provisions of this section. Under this authority, the Board may refer to the Internal Revenue Service for collection by tax refund offset, from refunds otherwise payable, past-due legally enforceable debts owed to the Board if:

(i) The debts are eligible for offset pursuant to 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402-6T, and the agreement between the Board, the Internal Revenue Service, and the Financial Management Service, and

(ii) The Board provides the information required by the agreement for each debt. This temporary rule and the agreement set forth terms under which the Board is identified by the Commissioner of Internal Revenue as eligible to participate in the tax refund offset program for each calendar year.

In order to participate in the Federal Tax Refund Offset Program in calendar year 1989, the Board must promulgate regulations that are effective upon publication.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this proposed rule within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 366

Income taxes, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, Title 20, Chapter II, Subchapter F of the Code of Federal Regulations, is amended by adding thereto a new Part 366 to read as follows (This regulation will expire January 11, 1994):

PART 366—COLLECTION OF DEBTS BY FEDERAL TAX REFUND OFFSET

Sec.

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3720A.

§ 366.1 Notification to Internal Revenue Service.

Upon entering into an agreement with the Internal Revenue Service and the Financial Management Service with regard to its participation in the tax refund offset program, the Board may notify the Internal Revenue Service, pursuant to the terms of such agreement, of past-due legally enforceable debts owed to the Board that are to be collected by tax refund offset. The Board's notification to the Internal Revenue Service will be as prescribed by the Internal Revenue Service in regard to information included and format, and will be made by such dates as prescribed by the Internal Revenue Service. The Board will provide the Internal Revenue Service with a toll-free or collect telephone number which the Internal Revenue Service may furnish to individuals whose refunds have been offset for use in obtaining information from the Board concerning the offset.

§ 366.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to the Internal Revenue Service is a debt:

(a) Which resulted from erroneous benefit or annuity payments made under the Railroad Unemployment Insurance Act or the Railroad Retirement Act or any other statute administered by the Board;

(b) Which is an obligation of a debtor who is a natural person;

(c) Which, except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least $25.00;

(e) With respect to which the individual's rights described in Part 260 or Part 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, have been exhausted;

(f) With respect to which either:

(1) The Board's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Which is not eligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) by the Board against amounts payable to the debtor by the Board;

(i) Which cannot currently be collected by administrative offset under § 255.6 or § 340.6 of this chapter against amounts payable to the debtor under any statute administered by the Board;

(j) With respect to which the Board has notified, or has made a reasonable attempt to notify, the individual that the debt is past due, and that unless the debtor repays the debt within 60 days, will be referred to the Internal Revenue Service for offset against any overpayment of tax; and

(k) With respect to which the Board has given the debtor at least 60 days from the date of the notification required in paragraph (j) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by such individual, and has determined that an amount of such debt is past due and legally enforceable.

§ 366.3 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor the Board must have used a mailing address for the debtor obtained from the Internal Revenue Service pursuant to section 6103 (m)(2) or (m)(4) of the Internal Revenue Code within a period of one year preceding the attempt to notify the debtor, whether or not the Board has used any other address maintained by the Board for the debtor.

§ 366.4 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 366.5 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board and a determination that an amount of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 366.6 Change in notification to Internal Revenue Service.

If, after submitting to the Internal Revenue Service notification of liability for a debt, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification,

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the Internal Revenue Service for offset, or

(c) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged, the Board will promptly notify the Internal Revenue Service. However, the Board will make no notification to the Internal Revenue Service to increase the amount of a debt owed by a debtor named in the Board's original notification to the Internal Revenue Service. If the amount of a debt is reduced after referral by the Board and offset by the Internal Revenue Service, the Board will refund to the debtor any excess amount and will promptly notify the Internal Revenue Service of any refund made by the Board.

§ 366.7 Sunset provision.

This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1988, and on or before January 10, 1994.

Dated: December 28, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-208 Filed 1-5-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103 and 165

[Docket No. 82N-0319]

Nonalcoholic Beverages: Repeal of Soda Water Standard of Identity; Amendment of Bottled Water Quality Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is repealing the standard of identity for soda water and amending the standard of quality for bottled water to delete the reference to the soda water standard. The standard of identity is being repealed because some provisions of the standard are being adequately dealt with by other regulations, while other provisions are no longer necessary.

DATES: Effective February 7, 1989. Compliance may begin March 7, 1989. Written objections and requests for a hearing by February 6, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of May 20, 1987 (52 FR 18922), FDA published a proposal to repeal the standard of identity for soda water (21 CFR 165.175) and to amend the standard of quality for bottled water (21 CFR 103.35) by deleting the reference to the soda water standard.

Interested persons were given until July 20, 1987, to comment on the proposal. Four letters, each containing one or more comments, were received in response to the proposal. One comment from the National Soft Drink Association supported the proposal, and the other comments, from the International Bottled Water Association (IBWA), from a consumer group, and from a company representative, either opposed the proposal or suggested changes to the proposal. A discussion of the comments and the agency's responses follow.

II. Comments

1. IBWA initially opposed the proposed change in § 103.35 to exclude any form of carbonated water from the definition of bottled water. IBWA maintained that the proposed change would eliminate any guidance for distinguishing between carbonated soda beverages and carbonated bottled water. In an addendum to their comment, IBWA suggested that § 103.35 be amended to include definitions for carbonated spring water, artesian water, and mineral water as a means of distinguishing various bottled waters. IBWA stated that inclusion of these definitions in the standard of quality would respond to IBWA's concern about the repeal of the standard for soda water. IBWA also filed a citizen petition (Docket No. 88P-0030/CP) to amend the standard of quality for bottled water (§ 103.35) and the current good manufacturing practice (CGMP) regulations for bottled water in Part 129 (21 CFR Part 129) to, among other things, include these and other definitions for types of bottled waters.

The agency does not believe it necessary to include definitions for bottled waters from various water sources and produced by different treatments in the standard of quality for bottled water at this time. Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) provides that a food will be deemed to be misbranded if its labeling is false or misleading in any particular. Accordingly, if a manufacturer decides to provide information in the labeling regarding the source of the water or special treatment that the water has received, such information must be truthful, factual, and not misleading in any respect. For example, a product labeled "carbonated spring water" would have to have been obtained from a spring and had carbonation added in some form. FDA concludes that existing statutory authority is sufficient to provide for regulatory action in instances where false and misleading statements concerning the source or treatment of the bottled water are made, and that it is not necessary to include specific statements to this effect in § 103.35.

With respect to IBWA's suggested definition for mineral water, FDA believes that it would be more appropriate to consider the merits of this suggested definition and definitions for other bottled water products when FDA acts on the IBWA petition to amend the standard of quality and the CGMP regulations for bottled water. In particular, the agency believes that the minimum levels for minerals in mineral water that are suggested by the IBWA petition should be offered for comment before adoption.

To clarify the intent of the changes that the agency is making in § 103.35, FDA has revised the language amending 21 CFR 103.35(a)(1) to state that the standard does not include "any type of soft drink commonly known as soda water, which is made by absorbing carbon dioxide in potable water." The agency believes that this revised language will minimize confusion concerning carbonated bottled waters that are exempt from the provisions of the standard of quality for bottled water (21 CFR 103.35).

2. One comment supporting retention of the soda water standard suggested that the description of soda water in the standard is outdated and needs to be either deleted or modified because it fails to define terms such as "seltzer," "sparkling mineral water," "carbonated mineral water," and "club soda." The comment expressed the opinion that, in the absence of such definitions, consumers will not be able to distinguish among product types.

The agency agrees that the various types of carbonated beverages may be confusing to some consumers. However, the agency does not believe that it is necessary to have a standard of identity to eliminate this confusion. The repeal of the soda water standard makes soda water products nonstandardized food that may contain any safe and suitable ingredient. All ingredients used in these beverages will have to be declared on the label in accordance with 21 CFR 101.4. Thus, consumers will be able to differentiate among various products on the basis of product composition.

3. One comment suggested that, if FDA establishes a prior sanction for caffeine in soft drinks (proposal—May 20, 1987; 52 FR 18923), the agency should retain the soda water standard and make caffeine an optional ingredient to encourage the soft drink industry to continue providing caffeine-free colas and other carbonated beverages.

FDA believes that retention of the soda water standard is unnecessary to continued marketing of caffeine-free beverages, and that agency action regarding the prior sanction of caffeine will not affect a manufacturer's ability to market such products.

The agency points out that, with the repeal of the standard of identity for soda water, manufacturers will be free to produce any cola or pepper beverage without added caffeine, irrespective of agency action regarding the prior sanction of caffeine. The agency believes that, as long as there is a market for caffeine-free carbonated beverages, the soft drink industry will produce such products. When soda water beverages are made with added caffeine, manufacturers will be required to declare the presence of the added caffeine in accordance with the labeling regulations in 21 CFR Part 101, as well as the presence of other ingredients used in these products in accordance with the law.

Accordingly, after review of all comments received, FDA concludes that the soda water standard is no longer needed and is repealing 21 CFR Part 165.

III. Related Action

On October 21, 1980 (45 FR 69816), FDA proposed to amend the standard of identity for soda water to: (1) Designate kola nut extract, rather than caffeine, as the mandatory ingredient in "cola" and "pepper" beverages; (2) provide for caffeine-free "cola" or "pepper" soda water beverages under the standard of identity; and (3) continue to permit the use of added caffeine in these beverages as an optional ingredient. Because FDA is repealing the soda water standard (21 CFR Part 165), the October 21, 1980, proposed amendment of the soda water standard is hereby withdrawn.

IV. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 6, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and

analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 103

Beverages, Bottled water, Food grades and standards.

21 CFR Part 165

Beverages, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 103 and 165 are amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR Part 103 is revised to read as follows:

Authority: Secs. 401, 403, 701, 52 Stat. 1046–1048 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 343, 371); 21 CFR 5.10.

2. Section 103.35 is amended in paragraph (a)(1) by revising the second sentence to read as follows:

§ 103.35 Bottled water.

(a) * * *

(1) * * * Bottled water does not include mineral water or any type of soft drink commonly known as soda water, which is made by absorbing carbon dioxide in potable water.

* * * * *

PART 165—[REMOVED]

3. Part 165—Nonalcoholic Beverages, consisting of Subpart A which is reserved and Subpart B which consists of § 165.175 *Soda water*, is removed.

Dated: December 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–183 Filed 1–5–89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Fenprostalene Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for use of fenprostalene solution in sows and gilts for the induction of parturition.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, has filed NADA 138–903, providing for subcutaneous use of Porcilene® (fenprostalene) solution for the induction of parturition in sows and gilts pregnant at least 112 days. The firm currently has approval for use of fenprostalene solution in feedlot heifers to induce abortion when pregnant 150 days or less and in beef or nonlactating dairy cattle for estrus synchronization. The NADA is approved and 21 CFR 522.914 (a) and (e) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.914 is amended by revising paragraph (a), by redesignating existing paragraphs (e) (1), (2), and (3) as paragraphs (e)(1) (i), (ii), and (iii), respectively, by revising the headings for redesignated paragraph (e)(1)(i) and by adding paragraph (e)(2) to read as follows:

§ 522.914 Fenprostalene solution.

(a) *Specifications*—(1) *Cattle.* Each milliliter of sterile solution contains 0.5 milligram of fenprostalene.

(2) *Swine.* Each milliliter of sterile solution contains 0.25 milligram of fenprostalene.

* * * * *

(e) *Conditions of use*—(1) *Cattle*—(i) *Amount.* * * *

* * * * *

(2) *Swine*—(i) *Amount.* 0.25 milligram (1 milliliter) subcutaneously once per animal.

(ii) *Indications for use.* For sows and gilts pregnant at least 112 days for the induction of parturition.

(iii) *Limitations.* Subcutaneous use in swine only. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 23, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–182 Filed 1–5–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8239]

Procedure and Administration; Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations which further amend temporary regulations that were published in the **Federal Register** on September 30, 1985, and were amended on May 13, 1987, relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.** The regulations affect any taxpayer who owes a past-due legally enforceable debt to any Federal agency identified as eligible to participate in the tax refund offset program by the Commissioner of Internal Revenue and who has made an overpayment of taxes, and such Federal agency to which the past-due legally enforceable debt is owed.

EFFECTIVE DATES: The regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985 and on or before January 10, 1994. However, if legislation is enacted extending the tax refund offset program beyond January 10, 1994, the regulations apply to refunds payable through the date to which such legislation extends the program. In such a case, the Service will publish notice confirming the extension of these regulations.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall, 202–566–4811 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1985, temporary regulations under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of Title 31, United States Code were published in the **Federal Register** (50 FR 39713, Sept. 30, 1985). Those regulations were amended on May 13, 1987 (52 FR 17949, May 13, 1987). The effective date of section 6402(d) was extended by section 9402 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, 101 Stat. 1330–376) and further extended by section 701 of the Family Support Act of 1988 (Pub. L. 100–485, 102 Stat. 2425). This document amends those temporary regulations, which provided guidance concerning which debts qualify for referral to the Service for the Federal tax refund offset program and concerning procedures relating to operation of the program.

In General

Section 6402(d) of the Internal Revenue Code requires the Internal Revenue Service (a) to reduce the amount of any overpayment (*i.e.*, tax refund) otherwise payable to a taxpayer by the amount of any past-due legally enforceable debt owed to a Federal agency of which the Service has been notified, (b) to pay the amount of the reduction to the agency to which the debt is owed, and (c) to notify the taxpayer that the overpayment has been reduced.

The temporary regulations require that a Federal agency submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by December 1 of each year. The regulations are amended to require the notification to be submitted to the Service by a date specified in a revenue procedure. Since the date by which notification must be submitted each year is subject to change, it was determined that providing the date by revenue procedure would allow greater flexibility in administering the program.

The regulations are amended to provide that the amount that is transmitted to each Federal agency is reduced by a fee for each offset.

The effective date of the regulations is amended to provide that the regulations are effective for refunds payable after December 31, 1985, and on or before January 10, 1994. However, if legislation extending the tax refund offset program beyond January 10, 1994, is enacted, the regulations are effective for refunds payable through the date to which such legislation extends the program.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 301.6402–6T also issued under 31 U.S.C. 3720A.

Par. 2. Section 301.6402–6T is amended as follows:

1. In paragraph (b), the first sentence of the concluding language that follows paragraph (b)(8) is revised to read as set forth below.

2. In paragraph (c) (1), the introductory language that precedes paragraph (c)(1)(i) is revised to read as set forth below.

3. Paragraphs (i) and (k) are revised to read as set forth below.

§ 301.6402–6T Offset of past-due legally enforceable debt against overpayment. (Temporary)

* * * * *

(b) * * *

For purposes of this paragraph, in order to make a reasonable attempt to notify the taxpayer the agency must use such address information as may be obtainable from the Service pursuant to section 6103 (m)(2), (m)(4) or (m)(5) of the Code. * * *

(c) *Time and content of notification of liability for past-due legally enforceable debt.* (1) A Federal agency must submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by such date as shall be specified in a Revenue Procedure each year. Such notification must contain—

* * * * *

(i) *Fees.* Refund offset fees in amounts determined to be sufficient to reimburse the Department of the Treasury for the full cost of the refund offset procedure prescribed by this section shall be deducted from amounts collected prior to disposition of such amounts as described in paragraph (h) of this section. The fees shall be deposited in the United States Treasury and credited to the appropriation accounts which bore all or part of the costs involved in

administering the refund offset procedures.

* * * * *

(k) *Effective date.* This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1985, and on or before January 10, 1994. However, if legislation is enacted extending the tax refund offset program beyond January 10, 1994, this section applies to refunds payable through the date to which such legislation extends the program.

* * * * *

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 22, 1988.

Dennis E. Ross,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-243 Filed 1-3-89; 2:39 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6698

[U-942-09-4214-10; U-57025]

Withdrawal of Public Land for Tabernacle Hill Lava Field, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 3,512.03 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Tabernacle Hill Lava Field. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, Lands and Mining Claims Adjudication Section, Utah State Office, 324 South State, Suite 301, Salt Lake City, UT 84111, 801-524-4036.

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, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2) but not from leasing under the mineral leasing laws, to protect the volcanic features:

Salt Lake Meridian

T. 22 S., R. 6 W.,
Sec. 3, lots 4 and 15, SW¼NW¼, W½SE¼NW¼, SW¼, and SW¼SE¼;
Sec. 4, lots 1 and 2, S½N½, and S½;
Sec. 5, S½S½SW¼, E½SE¼, E½W½SE¼, and SW¼SW¼SE¼;
Sec. 7, E½E½E½;
Sec. 8, All;
Sec. 9, All;
Sec. 10, W½NE¼, W½, NW¼NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, and W½W½SW¼SE¼;
Sec. 15, W½NE¼NW¼, W½NW¼, and SE¼NW¼;
Sec. 17, N½, E½SE¼, E½NW¼SE¼, and NE¼SW¼SE¼;
Sec. 20, E½NE¼NE¼;
Sec. 21, NW¼NW¼.

The area described contains 3,512.03 acres in Millard County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than those under the mining law.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

December 22, 1988.

[FR Doc. 89-201 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-DQ-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 87-570; FCC 88-350]

Administrative Practice and Procedure; Federal Claims Collection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted specific procedures implementing the Debt Collection Act of 1982 and related statutory provisions. These procedures will be used for expediting the collection of debts owed to the United States Government. Specifically, the rules address the use of administrative and salary offsets; the reporting of delinquent individual debtors to consumer reporting agencies; the assessment of interest, penalties, administrative charges, and other sanctions against delinquent debtors; the issuance of contracts to private collection services for the recovery of money owed to the United States; and the procedures to be followed in referring delinquent debts to the Department of Treasury for collection by offsets against tax refunds owed to the particular debtor. Delinquent monetary forfeitures will not be collected under these adopted procedures until all the procedures for the enforcement and collection of forfeitures specified in the Communications Act are exhausted.

EFFECTIVE DATE: February 6, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Magalie Salas, (202) 254-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 88-350, adopted October 28, 1988, and released December 23, 1988. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On December 24, 1987, the Commission published in the **Federal Register** a notice of proposed rulemaking requesting comments on its proposed rules to implement the Debt Collection Act of 1982 and section 2653(a)(1) of the Deficit Reduction Act of 1984 (52 FR 48725). The only comments received in this proceeding were filed by Northwestern Indiana Telephone Company (NITCO).

NITCO suggested that the proposed rules be clarified to indicate that, with respect to the collection of monetary forfeitures imposed by the Commission, the proposed debt collection procedures will be invoked only after the judicial review proceedings prescribed in sections 503 and 504 of the Communications Act have become final.

2. The *Report and Order* clarifies that the Commission must adhere to the statutory procedures for forfeitures in the Communications Act before invoking debt collection procedures under the adopted rules. While it is clear that the Debt Collection Act was

designed for the collection of monetary forfeitures, the related uniform standards issued by the Department of Justice and the General Accounting Office prescribe that laws and regulations that are specifically applicable to claims collection activities of a particular agency take precedence over the procedures set forth by the Debt Collection Act. Thus, because sections 503 and 504 of the Communications Act delineate specific procedures for the collection of forfeitures imposed by the Commission, those procedures must be followed before considering other procedures adopted in this proceeding. Proposed rule 1.1905 has been clarified in order to address this matter.

3. The final rules adopted herein have been analyzed pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). In this connection, we find that the rules prescribe no new modified forms to be submitted by the public.

4. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated attached to this Order. These rules will become effective February 6, 1989.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 1

Collection of claims owed the United States.

Final Rules

Part 1 [Practice and Procedure] of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new Subpart O as follows:

PART 1—[AMENDED]

1. Subpart O is added to read as follows:

Subpart O—Collection of Claims Owed the United States

General Provisions

Sec.

Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

Salary Offset

Interest, Penalties, Administrative Costs and Other Sanctions.

Cooperation With the Internal Revenue Service

General Provisions Concerning Interagency Requests

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; 4 CFR Parts 101–105; 5 CFR Part 550.

Subpart O—Collection of Claims Owed the United States

General Provisions

§ 1.1901 Definitions.

(a) The term "administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) The term "agency" means the Federal Communications Commission (Commission) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term "agency head" means the Chairman of the Federal Communications Commission.

(d) The terms "appropriate agency official" or "designee" means the Managing Director of the Commission or such other official as may be named by the Managing Director.

(e) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency. They include amounts owing to the United States on account of loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, and forfeitures (except those arising under the Uniform Code of Military Justice), and other similar sources.

(f) The term "creditor agency" means the agency to which the debt is owed.

(g) The term "delinquent" means a claim or debt which has not been paid by the date specified in the agency's written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement with the agency.

(h) The term "disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(i) The term "employee" means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(j) The term "FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR Parts 101–105.

(k) The term "paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(l) The term "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(m) The term "salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at

one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) The term "waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C 710, 5 U.S.C. 8346(b), or any other law.

§ 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR Part 101–41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (See 48 CFR Part 32). If not otherwise provided for in the FAR system, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims.

(d) Tax claims are also excluded from the coverage of this regulation.

§ 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

§ 1.1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719, as amended by Pub. L. 97–365, 96 Stat. 1749) have been implemented in government wide standards:

(a) The Regulations of the Office of Personnel Management (5 CFR Part 550) and

(b) The Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101–105).

Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in these regulations, the Commission will proceed in any actions taken in accordance with applicable requirements found in the standards referred to in this section.

§ 1.1905 Other procedures; collection of forfeiture penalties.

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures required by other statutes or regulations. In particular, the assessment and collection of monetary forfeiture penalties imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings.

§ 1.1906 Informal action.

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available.

§ 1.1907 Return of property.

Nothing contained in this regulation is intended to deter the Commission from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

§ 1.1908 Omissions not a defense.

The failure of the Commission to comply with any provision in this regulation shall not serve as a defense to the debt.

Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

§ 1.1911 Demand for payment.

(a) Written demands for payment shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not not require rebuttal. In determining the timing of demand letters, the Commission will give due regard to the need to act promptly so that, as a general rule, if it becomes necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interest (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this chapter, including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of:

(1) The basis for the indebtedness and the right of the debtor to request review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this subpart) and;

(3) The date by which payment is to be made, which normally should not be more than 30 days from the date that the initial demand letter was mailed or hand-delivered.

(c) As appropriate to the circumstances, the Commission may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiation of, at any time during, or after completion

of the demand cycle, the Commission determines to pursue administrative offset, then the procedures specified in §§ 1.1912 and 1.1913 as applicable, will be followed. The availability of funds for offset and the agency's determination to pursue that remedy, release the agency from the necessity of further compliance with paragraphs (a), (b) and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§ 1.1912 and 1.1913 as applicable.

§ 1.1912 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. The Commission will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government's interest. In appropriate circumstances, the Commission may give due consideration to the debtor's financial condition and is not required to use offset in every instance in which there is an available source of funds. The Commission may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Before the offset is made, a debtor shall be provided with the following: Written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt.

(1) The Commission will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission will normally accept a repayment agreeement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or pursuant to 47 U.S.C. 503, 504 and 47 CFR 1.80, the agency is not required to duplicate those requirements before taking administrative offset.

(3) The Commission may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) The Commission is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local Government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) Any case in which collection of the claim or type of claim by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraph (b) of this section if:

(i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(6) The Commission will obtain credit reports on delinquent accounts to identify opportunities for administrative offset of amounts due to a delinquent debtor when other collection techniques have been unsuccessful.

(c) Type of hearing or review. (1) For purposes of this section, whenever the Commission is required to provide a hearing or review within the agency, it shall provide the debtor with a reasonable opportunity for an oral hearing when:

(i) Any applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(ii) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(2) The section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency will make its determination on the request for waiver or reconsideration based upon a "paper hearing," that is, a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in affecting collection by administrative offset. Generally, the Commission will not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the

applicable provisions of these standards or the offset otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and full compliance with the provisions of this section has taken place.

(g) When collecting multiple debts by administrative offset, the Commission will apply the recovered amounts to those debts in accordance with the best interest of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation.

§ 1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Commission may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owned to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Commission shall include written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Commission has complied with the applicable statutes, regulations and procedures of the Office of Personnel Management; and

(3) The Commission has complied with the requirements of § 1.1912 of this subpart, including any required hearing or review.

(c) Once the Commission decides to request administrative offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory payment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, it shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the Commission's determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

§ 1.1914 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this subpart should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. If the Commission agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debtor and debtor's ability to pay. If possible, the installment payments should be of sufficient size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month will be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause.

(b) If the debtor owes more than one debt and designates how a voluntary installment is to be applied among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Commission will apply payments to various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1.1915 Exploration of compromise.

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103).

§ 1.1916 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the Federal Claims Collection Standards (4 CFR Part 104).

§ 1.1917 Referrals to the Department of Justice or the General Accounting Office.

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the Federal Claims Collection Standards (4 CFR Part 105).

§ 1.1918 Use of consumer reporting agencies.

(a) The term "individual" means a natural person, and the term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act, as amended, at 31 U.S.C. 3701(a)(3) or the Fair Credit Reporting Act, at 15 U.S.C. 168a(f).

(b) The Commission may disclose to a consumer reporting agency, from a system of records, information that an individual is responsible for a claim if—

(1) Notice required by section 5 U.S.C. 552a(e)(4) indicates that information in the system may be disclosed to a consumer reporting agency;

(2) The claim has been reviewed and it is decided that the claim is valid and overdue;

(3) The Commission has notified the individual in writing—

(i) That payment of the claim is overdue;

(ii) That, within not less than 60 days after sending the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(iii) Of the specific information to be disclosed to the consumer reporting agency; and

(iv) Of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to adminstrative appeal or review of the claim; and

(4) The individual has not—

(i) Repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the agency has agreed to; or

(ii) Filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall—

(1) Disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(2) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) Obtain satisfactory assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Before disclosing information to a consumer reporting agency, the Commission shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice.

(g) Before disclosing information to a consumer reporting agency, the Commission shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(h) Under the same provisions as described above, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act.

§ 1.1919 Contracting for collection services.

(a) The Commission has authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation is retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable the Commission to determine whether to pursue collection through litigation or to terminate collection efforts; and

(5) The contractor must agree to provide any data contained in its files relating to paragraphs (a)(1), (2), and (3) of § 105.2 of the Federal Claims Collection Standards (4 CFR Part 105) upon returning an account to the Commission for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts. (1) The Commission may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) The Commission may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) The Commission may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance appropriation acts or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless the receipt qualifies as a refund to the appropriation, or unless otherwise specifically provided by law, the Commission must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(c) The Commission will consider the use of collection agencies at any time after the account is 61 days past due. In any case where an account is six months or more past due, the Commission may turn it over to a collection agency unless referred for litigation or unless arrangements have been made for a workout procedure or the Commission has exercised its authority to write off the debt pursuant to § 1.1916.

(d) The Commission will generally not use a collection agency to collect a delinquent debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

Salary Offset

§ 1.1925 Purpose.

This section provides the standards to be followed by FCC in implementing 5 U.S.C. 5514 to recover a debt from the pay account of an FCC employee, and establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1.1926 Scope.

(a) *Coverage.* This section applies to agencies and employees as defined by § 1.1901.

(b) *Applicability.* This section and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (4 CFR Parts 101–105).

(1) Excluded debts or claims. The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Waiver requests and claims to the General Accounting Office. This section does not preclude an employee from

requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

(c) *Time Limit.* Under 4 CFR 102.3(b)(3) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 102.3(b)(3).

§ 1.1927 Notification.

(a) Salary offset deductions shall not be made unless the Managing Director of the Commission, or such other official as may be named in the future by the Managing Director of the Commission, provides the employee at least 30 days before any deduction written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the agency's policy concerning interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in agency files (4 CFR 102.2(e)).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by this subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations.

(ii) Penalties under the False Claims Act sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1.1928 Hearing.

(a) *Petition for Hearing.* (1) A hearing may be requested by filing a written petition with the Managing Director of the Commission, or such other official as may be named by the Managing Director of the Commission, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to above, the Commission will nevertheless accept the petition if the employee can show that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (3) above, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of Hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the agency and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent himself or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the agency.

§ 1.1929 Deduction from pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States should be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum, or, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will normally be made in installments.

(2) The installments shall not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions must be made over a period not greater than the anticipated period of employment except as provided in § 1.1930.

§ 1.1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited, to, final salary payment or lump-sum leave due the employee as the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913 of this regulation.

§ 1.1931 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1.1932 Refunds.

(a) Refunds shall promptly be made when—

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1.1933 Interest, penalties and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with § § 1.1940 and 1.1941 of this regulation.

§ 1.1934 Recovery when paying agency is not creditor agency.

(a) Responsibilities of creditor agency. Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its claim to the employee's paying agency for collection pursuant to § 1.1930. The paying agency must certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 4 CFR 102.4)

(b) Responsibilities of paying agency—

(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officials established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another.

(1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the

collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

§ 1.1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of 5 CFR Part 581 for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

Interest, Penalties, Administrative Costs and Other Sanctions

§ 1.1940 Assessment.

(a) Except as provided in paragraph (h) of this section, or § 1.1941, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, the Commission will mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning these charges.

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency. If the Commission should use an "advance billing" procedure—that is, if it mails a bill before a debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury Tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. The Commission may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the Commission may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be assessed on accrued interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment schedule.

(d) The Commission shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incured in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based upon actual costs incurred or upon costs analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(e) The Commission shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. It may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the Commission may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103) relating to the compromise of claims (without regard to the amount of the debt), or if it determines that collection of these charges would be against equity and good conscience, or not in the best interest of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised under appropriate circumstances. Examples of appropriate circumstances include:

(1) Waiver of interest pending the agency's disposition of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and

(2) Waiver of interest where the Commission has accepted an installment plan under § 1.1914, and there is no indication of fault or lack of good faith on the part of the debtor.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 104.2(c)(1) of the Federal Claims Collection Standards (4 CFR Part 104).

§ 1.1941 Exemptions.

(a) The provisions concerning interest and penalty on claims contained in 31 U.S.C. 3717 do not apply:

(1) To debts owed by any State or local government;

(2) To debts arising under contracts which were executed prior to, and were in effect on (*i.e.*, were not completed as of), October 25, 1982;

(3) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1.1942 Other sanctions.

The remedies and sanctions available to the Commission in this subpart are

not exclusive. The Commission may impose other sanctions, where permitted by law, for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

Cooperation with the Internal Revenue Service

§ 1.1950 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the Service, when:

(a) The principal amount of the debt not in dispute is $600 or more; and

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

§ 1.1951 Offset against tax refunds.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

General Provisions Concerning Interagency Requests

§ 1.1952 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Services Branch, FCC, 1919 M Street NW., Washington, DC 20554.

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 81273–82731]

Taking and Importing of Marine Mammals

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

ACTION: Interim final rule.

SUMMARY: NOAA issues this interim final rule to (1) require that in purse seine sets involving marine mammals, U.S. tuna fishing vessels must have completed the backdown maneuver and begun rolling the net to sack-up no later than 30 minutes after sundown, unless an operator qualifies for a waiver; (2) establish a procedure for permitting fishing operations to experiment with new equipment and procedures to reduce marine mammal mortality; and (3) prohibit the use of explosive devices, other than Class C devices, in tuna purse seine fishing involving marine mammals. This rule implements certain measures contained in the Marine Mammal Protection Act Amendments of 1988, which were signed into law on November 23, 1988.

EFFECTIVE DATE: This rule is effective on January 1, 1989, except for the amendments to 50 CFR 216.24(d)(2)(vii)(C) (*1*) and (*5*), and (viii), which contain information-collection requirements and will not be effective until approved by the Office of Management and Budget. When approval is obtained, NOAA will publish notice of the effective date of the amendments to 50 CFR 216.24(d)(2)(vii)(C) (*1*) and (*5*), and (viii) in the **Federal Register**. The rule will remain effective until superceded. Comments are invited and must be received on or before February 21, 1989.

ADDRESSES: Comments may be mailed to E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service (213) 514–6196.

SUPPLEMENTARY INFORMATION:

Background

Purse seine fishing for yellowfin tuna in the Eastern Tropical Pacific (ETP) Ocean is conducted mainly in association with porpoise. Schools of large yellowfin tuna tend to swim beneath schools of porpoise. During the fishing operation, porpoise are searched for, herded by speedboats, surrounded by the seine, and released over the net while tuna remain captured through a process called backdown. Porpoise may become entangled in the net and drown before they are released. This type of fishing operation is prohibited by the Marine Mammal Protection Act (MMPA), except when conducted under the General Permit issued to the American Tunaboat Association (ATA) and in compliance with the applicable regulations.

Although only about ten percent of the sets on marine mammals extend into darkness, the average rate of marine mammal mortality in those purse seine sets is substantially higher than in sets completed during daylight. To reduce that mortality rate, NOAA required, effective July 1, 1986, that high intensity lighting systems be installed on all certificated tuna vessels and those lights be used to illuminate the net to help in the release of entrapped marine mammals. Despite a reduction in mortality with the use of these lights, the kill rate in sets extending into darkness remains significantly higher than in daylight sets. Between July 1, 1986 and June 30, 1988, the marine mammal mortality rate in sets that extend into darkness was 0.568 animals per short ton of yellowfin tuna caught compared to 0.154 mammals killed per short ton of yellowfin tuna caught in daylight sets.

In reauthorizing the MMPA in 1988, the Congress has acted to prevent the higher mortality rate found in "sundown sets" by directing the Secretary to Prescribe regulations to ensure that the backdown procedure is completed and rolling of the net to sack-up has begun

no later than thirty minutes after sundown. The backdown maneuver involves moving the vessel backward in a shallow arc to form the pursed net into an elongated narrow channel, which is lined with the required fine mesh webbing to prevent marine mammal entanglement. During this maneuver, marine mammals are herded to the apex of the net channel where they can escape over the cork lines. Skillful and careful performance of the backdown procedure is the best and safest means of releasing mammals from the net once they are encircled. If this part of a purse seine set takes place in darkness, the effectiveness of the release is compromised because of the reduced visibility.

Records from NOAA and Inter-American Tropical Tuna Commission observers aboard U.S.-flag tuna vessels indicate that, during the past ten years, approximately 30 percent of the marine mammals killed in tuna fishing by U.S.-flag purse seine vessels were killed in sets that extended into darkness. Those sets represent only 10 percent of the total sets on marine mammals and are estimated to produce 10 percent of the yellowfin tuna caught in association with marine mammals. An environmental assessment prepared by NOAA for this rulemaking estimates that a prohibition of sundown sets would reduce marine mammal mortality by approximately 25 percent, and would also extend the average fishing trip by five days. This conclusion is based on the expectation that vessels would replace the catch foregone in sundown sets by extending their fishing trips and making more daylight sets on marine mammals.

The 1988 MMPA amendments provide that the Secretary of Commerce may exempt a certificate holder from the sundown set restriction on trips carrying an observer, if the holder's marine mammal mortality rate in sundown sets has been consistently no greater than the average of the U.S.-flag fleet during daylight sets. This rule provides for such an exemption and for the continuing monitoring of exempted operators' performances to ensure that their exemptions continue only if their mammal mortality rate in sundown sets remains as low as the United States fleet's average during daylight sets for the same period of time.

The 1988 MMPA amendments also provide that the Secretary may exempt the entire fleet if it is determined that all the vessels and operators in the fleet are using equipment and procedures that reduce the mammal mortality in sundown sets to that of the average for daylight sets. Based on observer records, the fleet average marine mammal mortality in sundown sets is greater than the average in daylight sets. During the period when high intensity lights have been required for use on sets in which the backdown occurs in darkness, the mortality rate in sundown sets has been 0.57 marine mammals killed per ton of yellowfin tuna caught. This rate is 3.7 times the mortality rate in daylight sets during the same period based upon using the data available, from July 1, 1986 through June 30, 1988. Expressed as kill per set, the mortality rate in sundown sets was 10.57 animals per set which is 3.6 times the average of 2.90 animals in daylight sets. These data indicate that the high intensity lighting system, while a useful tool, has not reduced the average mortality rate in sundown sets to equal that of daylight sets. Therefore, an exemption for the fleet as a whole is not warranted at this time.

The 1988 amendments also require NOAA to establish a system to provide vessel owners and operators an opportunity to experiment with new equipment and procedures for the purpose of reducing mammal mortality and the serious injury rate. In experimental fishing operations under a permit, the Secretary may waive or modify restrictions that would otherwise apply under the marine mammal regulations or the terms and conditions of the ATA general permit. The Secretary, however, may not waive marine mammal quotas or the prohibition against setting nets around pure schools of certain marine mammals.

The 1988 amendments further direct the Secretary to prohibit immediately the use of explosive devices, other than Class C explosive devices, in purse seine fishing operations involving marine mammals. Further, the Secretary was instructed to study the effects of Class C devices on marine mammals and to restrict or prohibit their use by April 1, 1990, unless the Secretary, based upon the study, determines that the devices do not result in physical impairment or increased mortality of marine mammals.

Commercial fishermen along the Pacific coast of the United States are allowed to use Class C explosive devices under the general permit covering their take of marine mammals in fishing operations. These devices are known as seal control devices and are for the purpose of driving off marine mammals, usually pinnipeds, that threaten the catch or fishing gear. Some tuna purse seine fishermen have adopted these devices for use in their operations to help herd and concentrate marine mammals and to keep the tuna from escaping the net as it is pursed. Research funded by NOAA found that the energy released by these devices in the ocean was below the threshold level known to cause auditory damage in bottlenose dolphin (Awbry, F.T. and J.A. Thomas, 1984. National Marine Fisheries Service Contract Number 84-JFA-00062). Congress directed that NOAA conduct new research to examine more directly the effect of seal control devices on porpoise in the tuna fishery. Therefore, the Secretary will restrict or prohibit the use of the Class C explosive devices in tuna fishing by April 1, 1990, unless the Secretary determines from this study that such explosive devices do not injure or physically impair marine mammals.

Description of Measures Contained in This Rule

Sundown Set Restriction and Exemption Procedure: This rule places the burden on the vessel operator to determine how much time must be allowed in order to complete a set through backdown to the start of rolling net to sack-up before one-half hour after sundown. Congress allowed NOAA the option to establish a time before sundown after which the sets could not be initiated to ensure that substantially all the fishing operations involving marine mammals would be completed before one-half hour after sundown. However, the variety of equipment, skill level of the crew, ocean conditions, and the number of tuna and dolphins in the set, among other factors, influence the time required for a set. The vessel operator best knows his vessel and crew capabilities and, therefore, is best qualified to determine if a particular set can reasonably be completed in the available time. In deciding how late a set may be initiated, a vessel operator should consult the time of local sunset calculated by the U.S. Naval Observatory and reprinted in "Tide Tables—West Coast of North and South America" published annually by NOAA. The operator also should review the vessel's recent performance records regarding the length of time required to complete a set.

Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system in order to keep marine mammal mortality to as low a level as possible. If the sundown set prohibition is violated, the amount of the penalty assessed will be set at a level

sufficiently high to deter intentional violations and will include consideration of a variety of factors, including the amount of time the vessel operator allowed to complete the set, the nature of any problems that developed, the efforts put into rescuing marine mammals to prevent mortality and injury, and the extent of mortality and serious injury in the set.

NOAA has calculated that the average mortality rate (marine mammals killed per ton of yellowfin tuna caught in sets on marine mammals) for observed daylight sets by the United States fleet between July 1, 1986 and June 30, 1988 was 0.154. The kill-per-ton rate was chosen because it is a meaningful performance measure within the fishing industry, was used in deriving the overall mortality quota, and is less variable than other performance measurements, such as kill-per-set or kill-per-day. This period was selected because the requirement for high intensity lights became effective on July 1, 1986, and the trips that were at sea on June 30, 1988 have returned and the observer data have been entered into the data base. Because observers accompanied nearly 100 percent of the fishing trips during 1987, a sufficiently large sample is available for this period. Therefore, the average mortality rate against which applicants for an initial exemption from the sundown set restriction will be compared is 0.154 marine mammals per ton of yellowfin tuna caught in sets involving marine mammals.

To apply for an exemption from the restriction on sundown sets while on observed trips certificated operators must submit a completed application to the Southwest Regional Director, NOAA. The Regional Director will authenticate the operator's mortality rate performance using observer records. If requested in the application, the Regional Director will determine whether the exclusion of any set (only one set per twelve month period can qualify for exclusion) is warranted because of an unforeseeable equipment malfunction that could not have been avoided by reasonable diligence in operating or maintaining the vessel. This determination may rely on records available to NOAA as well as the operator's submission, but it is the operator's responsibility to provide reasonable proof that the malfunction during the set meets the criteria and caused the mortality in the set.

After the determination regarding the petition to exclude a set or sets, the average mortality rate in sundown sets after July 1, 1986 will be calculated for the individual operator and compared to the standard. If fewer than five sundown sets by an operator were observed since July 1, 1986, trips prior to that date will be considered starting with the most recent observed trip and reviewing as many trips as necessary to include at least five sundown sets. Entire trips will be reviewed if any set in the trip is needed to make up the minimum five sundown sets. For example, assume an operator did not have any observed sundown sets since July 1, 1986, but did have three observed sundown sets on a trip in 1985 and five observed sundown sets on a trip in 1984. All five of the sundown sets in the 1984 trip, unless one set were excluded due to mechanical failure, would be considered in calculating that operator's average mortality because two sets from that trip was needed to make up the minimum of three sundown sets. If the operator's mortality rate in sundown sets is no higher than the fleet average for daylight sets, the Regional Director will issue a letter of exemption valid for one calendar year, which will allow the individual operator to make sets on marine mammals that continue beyond one-half hour after sundown while on trips with IATTC or NOAA observers.

An operator with an exemption must follow the marine mammal release requirements. If the set continues beyond one-half hour after sundown, the high intensity lights must be used to illuminate the backdown channel to aid in marine mammal release.

Exemptions from the sundown set restriction will be reviewed annually using all observed trips completed in the previous twelve months for which the data are available to NOAA by November 1 each year. If the operator has continued to have a mortality rate no greater than the fleet's daylight set average mortality rate for the same time period, the exemption will continue in effect. If the operator's sundown set mortality rate averaged over the previous twelve-month period exceeds the fleet daylight set average for the same period, that operator's exemption will not be renewed.

NOAA considered including in this interim final rule a system to revoke the sundown set exemption from an operator earlier than the end of the year, if the operator's sundown set performance was obviously not meeting the standard. In the time available to complete this rule, NOAA was not able to design an administratively practical and fair system. During the comment period, we are soliciting comments particularly on the desirability of being able to revoke an exemption early and recommendations for identifying an operator whose exemption should be revoked, based on one or two trips.

An operator who is notified, or anticipates, that his exemption will not be renewed may petition the Regional Director in writing to reinstate the exemption based upon a claim that a set should be excluded from the calculations of the operator's performance due to an unforeseeable equipment malfunction that could not have been avoided by reasonable diligence in operating or maintaining the vessel.

Under the provisions of the 1988 amendments, newly certificated operators and those operators whose exemptions have been revoked permanently have no means of obtaining an exemption from the sundown set restriction other than by successfully testing new equipment or procedures in sundown sets under an experimental fishing operation permit.

Vessels at sea when this rule becomes effective will be subject to the sundown set restriction on the next fishing trip. Due to the complexity of this rule and the need to have it implemented rapidly, it is not possible to adequately inform those operators at sea how the rule applies to them individually.

If the Secretary determines, based on research or experimental fishing operations, that vessel equipment or fishing procedures exist which can be applied to all vessels in the fleet to reduce the fleet average mortality rate in sundown sets to that of the fleet's average mortality rate in daylight sets, the restriction on sundown sets may be rescinded through a rulemaking.

Use of Explosive Devices

This rule prohibits the use of explosive devices in tuna purse seine operations that involve marine mammals with one exception. The exception from this prohibition is that Class C explosive devices, approved by the U.S. Department of Transportation, may be used when marine mammals are present. The use of these devices is limited to influencing the movements of marine mammals and tuna. Their use to injure marine mammals is not permitted. This rule does not relieve the vessel owner or operator from any other laws or regulations, Federal, State, or local, that may govern the possession or use of these explosive devices.

NOAA will study the effect of Class C explosives on marine mammals as they are used in the tuna fishery. If from the results of that study the Secretary cannot determine that these devices are not injurious to marine mammals, the

Secretary will promulgate regulations either restricting or prohibiting the use of Class C explosives in tuna fishing operations that involve marine mammals by April 1, 1990. The NOAA Southwest Fisheries Center will consult with the Marine Mammal Commission and other interested parties in designing and carrying out this study.

Experimental Fishing Operations

This rule establishes in regulations a permitting process for experimental fishing operations that is similar to the procedures previously followed by the Southwest Regional Director in considering requests for variances in the porpoise safety gear requirements. The scope of potential experiments and the duration of those experiments is broadened under this rule, but the primary purpose of the experiment must be to test gear or methods that might reasonably be expected to reduce the number of marine mammals killed or seriously injured in purse seining operations. With two exceptions, NOAA can waive requirements under the regulations and the terms and conditions under the General Permit held by the ATA in order to allow the conduct of an experimental fishing operation. The two exceptions are that marine mammal quotas and the prohibition on setting nets on pure schools of certain dolphin species may not be waived.

Applications for experimental permits are required to be submitted by the vessel certificate holder sufficiently far in advance of the proposed beginning of the intended operation to allow for publication of a summary of the application for comment in the **Federal Register** and for review by the NOAA scientific staff and the Marine Mammal Commission Scientific Advisors. The Regional Director may require modifications to the experimental design and such reporting as he deems necessary as conditions for approval of the application. An observer from NOAA must accompany all trips conducted under the experimental permit. The Regional Director may terminate the experiment by written notice to the vessel certificate holder if higher than expected marine mammal mortalities occur, if any conditions of the permit are not met, or if any regulations are not followed.

The existing provision for waiver of specific gear requirements to experiment with new gear to improve marine mammal safety is deleted. This new system governing experimental fishing operations includes the potential for gear requirement waivers as well as other experiments.

Classification

This rule is being promulgated as interim final without opportunity for prior public comment and without a delayed effectiveness period in order to meet a schedule required in the statute. The Marine Mammal Protection Act Amendments of 1988, signed into law on November 23, 1988, require that the sundown set rule must be effective by January 1, 1989 and the prohibition on explosives other than Class C devices must be effective immediately. The portion of this rule that establishes a procedure permitting experimental fishing operations has been included because NOAA wants to be able to receive and act promptly on all reasonable new means of reducing incidental mortality. It would be contrary to the public interest to delay effectiveness of the experimental fishing permit procedure (beyond that time necessary for obtaining approval from the Office of Management and Budget for the collection-of-information requirements). Public comment is solicited while the rule is in effect, and comments received will be considered in preparing a final rule.

The Assistant Administrator has determined, based on an environmental assessment prepared by NOAA, that the modifications to the regulations being made at 50 CFR 216.24(d) will not have a significant impact on the environment. As a result of this determination, an environmental impact statement will not be prepared. The EA is available upon request (see **ADDRESS**).

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. NMFS prepared a regulatory impact review as part of its EA which concluded that this rule will not result in: (1) An annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The estimated economic impact of this rule on the U.S. tuna fishery in the ETP ranges from $15,000 to $40,000 per vessel annually, which represents 0.7 to 1.8 percent of the total operating cost for a typical vessel. For a 34 vessel fleet, the total increased costs would range from $510,000 to $1,360,000 annually. A copy of the review is available upon request (see **ADDRESS**).

Because this rule is being published as an interim final rule rather than a proposed rule, the requirements of the Regulatory Flexibility Act do not apply. However, modification of the regulations will not have a significant economic effect on a substantial number of small entities. In recent years, 34 vessels, which is about half of the U.S.-flag tuna purse seiners larger than 400 tons carrying capacity, fish in the ETP Ocean for yellowfin tuna associated with marine mammals, and will be subject to the rule. These vessels all have essentially the same capabilities and would be affected similarly. The expected operating cost increase of between 0.7 and 1.8 percent is not a significant increase for the U.S. tuna fishermen.

This rule contains collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The collections, which are subject to the Act, are found at 50 CFR 216.24(d)(2)(vii)(C) (*1*) and (*5*), which is the application for an exemption from the sundown set prohibition, and (viii), which is the application for an experimental fishing operation permit. These information collections will be submitted to the Office of Management and Budget (OMB) with a request for expedited review. The sections containing the collection-of-information requirements will take effect after approval by OMB, while the other sections will take effect January 1, 1989, in order to comply with the statute. NOAA will issue a notice of the effective date on obtaining approval from OMB.

Public reporting burden for this collection of information is estimated to average 1.5 hours per application for an exemption from the sundown set prohibition including the time for reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. This is a one-time collection and approximately 35 responses are expected. The total reporting burden on tuna vessel operators will be 52.5 hours to apply for sundown set exemptions. Public reporting burden related to application for an experimental fishing operation will vary widely with the complexity of the proposed experiment. The average burden is estimated to be three hours. Based on recent experience, applications to test new gear or procedures will be infrequent. The maximum number of responses is expected to be two per year, resulting in a total reporting burden of six hours for tuna vessel owners. Send comments

regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR1), Washington, DC 20235, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

For the reasons stated above, 50 CFR Part 216 is amended as follows:

PART 216—[AMENDED]

1. The authority for Part 216 continues to read as follows:

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

§ 216.24 [Amended]

2. Section 216.24 is amended by revising paragraph (d)(2)(vii)(C) and adding new paragraph (d)(2)(vii)(E) to read as follows:

* * * * *

(d) * * *

(2) * * *

(vii) * * *

(C) *Sundown sets prohibited.* On every set encircling porpoise, the backdown procedure must be completed and rolling of the net to sack-up must be begun before one-half hour after sundown, except as provided below. For the purpose of this section, "sundown" is defined as the time at which the upper edge of the sun disappears below the horizon or, if view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory. A "sundown set" is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system.

(*1*) A certificated operator may obtain an initial waiver from this prohibition, for trips with an observer, by establishing to the satisfaction of the National Marine Fisheries Service (NMFS) Southwest Regional Director, based upon NMFS and Inter-American Tropical Tuna Commission (IATTC) observer records, that the operator's average kill of marine mammals per ton of yellowfin tuna caught in sundown sets involving marine mammals was 0.154 mammals or fewer.

(*i*) The application must include the following:

(*A*) Name of the operator as it appears on the certificate of inclusion;

(*B*) The dates of all observed trips any part of which occurred since July 1, 1986 and observed trips before that date, if necessary to include a minimum of three observed sundown sets;

(*C*) Names of the vessels operated during those trips;

(*D*) The number of marine mammals killed and the number of tons of yellowfin tuna caught in sundown sets involving marine mammals;

(*E*) Detailed description of the circumstances that support any request that the mortality associated with a particular sundown set be excluded from consideration; and

(*F*) The operator's signature or the signature of an individual authorized by the operator to make the application in the operator's absence.

(*ii*) All sundown sets since July 1, 1986 will be considered for this determination, except that the Regional Director will exclude one sundown set from each twelve month period from the calculations of average kill if the operator establishes to the satisfaction of the Regional Director that the kill in that sundown set was due to an unforeseeable equipment malfunction that could not have been avoided by reasonable diligence in operating or maintaining the vessel.

(*iii*) An operator must have a minimum of five observed sundown sets for the Regional Director to consider in determining whether or not the operator qualifies for an exemption. If an operator does not have five observed sundown sets since July 1, 1986, the NMFS Southwest Regional Director will consider records from observed trips before that date, starting with the most recent observed trip during which a sundown set was made and reviewing as many trips as necessary to obtain at least five sundown sets for consideration.

(*2*) An operator fishing under an exemption from the sundown set prohibition must follow the marine mammal release requirements, including the use of high intensity lights for sets that continue one-half hour past sundown.

(*3*) An operator exemption is valid for one calendar year only on trips carrying a NMFS or IATTC observer and expires on December 31, unless renewed by the Regional Director.

(*4*) An exemption will be reviewed annually between November 1 and December 15 and the exemption will not be renewed if the operator's average mortality in sundown sets during trips completed in the previous twelve month period ending November 1 exceeds the United States fleet's average mortality rate in daylight sets for all of the observed trips completed in the same period.

(5) An operator who is notified that his or her exemption will not be renewed, or who anticipates not getting renewed, may petition the Regional Director in writing to reinstate the exemption based on excluding from the calculations one set where an unforeseeable equipment malfunction caused mortality in a sundown set that could not have been avoided by reasonable diligence in operating or maintaining the vessel. The Regional Director will reinstate the exemption if the evidence supports excluding the set and if the resulting recalculation of the operator's performance meets the standard required by these regulations.

* * * * *

(E) *Use of explosive devices:* The use of explosive devices, other than Class C explosives as defined in 49 CFR 173.100 and approved by the Department of Transportation, is prohibited in marine mammal sets. Use of Class C explosive devices to injure marine mammals is prohibited.

3. In § 216.24, paragraph (d)(2)(iv)(J) is removed.

4. In § 216.24, a new paragraph (d)(2)(viii) is added to read as follows:

* * * * *

(d) * * *

(2) * * *

(viii) *Experimental fishing operations:* The Regional Director, Southwest Region, may authorize experimental fishing operations and may waive, as appropriate, any requirements within § 216.24(d)(2), except quotas on the incidental kill of marine mammals and the prohibition on setting nets on pure schools of certain porpoise species.

(A) A vessel certificate holder may apply for an experimental fishing operation waiver by submitting the following information to the Southwest Regional Director no less than 90 days before the intended date the proposed operation is intended to begin:

(*1*) Name(s) of the vessel(s) and the vessel certificate holder(s) to participate;

(*2*) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(3) A description of how the proposed modification to the gear or procedures is expected to reduce incidental mortalities or serious injury of marine mammals;

(4) A description of the applicability of this modification to other purse seine vessels;

(5) Planned design, time, duration, and general area of the experimental operation;

(6) Name(s) of the certificated operator(s) of the vessel(s) during the experiment;

(7) A statement of the qualifications of the individual or company doing the analysis of the research.

(B) The Regional Director will acknowledge receipt of the application and, upon determining that it is complete, publish notice in the **Federal Register** summarizing the application, making the full application available for inspection and inviting comments for a minimum period of thirty days from the date of publication.

(C) The Regional Director, after considering the information identified in paragraph (d)(2)(viii)(A) of this section and the comments received, will deny the application giving the reasons for denial or issue a permit to conduct the experiment including restrictions and conditions as deemed appropriate.

(D) The permit for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer assigned by the NMFS, and when all the terms and conditions of the permit are met.

(E) The Regional Director may suspend or revoke an experimental fishing permit by written notice to the permit holder if the terms and conditions of the permit or the provisions of the regulations are not followed, after providing an opportunity for the permit holder to discuss the proposed suspension or revocation.

December 29, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA.

[FR Doc. 89-137 Filed 1-5-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 81264-8264]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the Bering Sea and Aleutian Islands Area pollock joint venture fishery, because the fishing season dates that control this fishery will impose unacceptable costs on the joint venture fishing industry. The Secretary, therefore, is changing the fishing season dates. This action is necessary to prevent burdensome operating costs on joint venture fishermen. This is a conservation and management measure intended to promote the fishery management objectives of the fishery management plan for the groundfish fishery of the Bering Sea and Aleutian Islands Area.

EFFECTIVE DATE: January 15, 1989

ADDRESS: Copies of the environmental assessment may be obtained from James W. Brooks, Acting Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ or 3-200 miles offshore) of the Bering Sea and Aleutian Islands area are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 675.

One of the groundfish species managed under the FMP is pollock, which U.S. fishermen have been catching and delivering to foreign processing vessels for joint venture processing (JVP). The current season for the JVP pollock fishery is divided into two parts as a result of Amendment 11 to the FMP (52 FR 45966, December 3, 1987) and is referred to as the pollock "split season." The first part of the split season starts January 15 and is allowed to continue until JVP fishermen have harvested the sum of 40 percent of the JVP specification for pollock plus 15 percent of the initial pollock total allowable catch (TAC). The second part of the split season starts April 15 and is allowed to continue until the JVP pollock specification has been reached. The regulation implementing the split season will expire after 1989, having been in effect for two years.

The split season served two purposes. One, since pollock spawn during February through early April, the resulting hiatus from the interim season closure afforded a conservation benefit to the pollock stock to the extent that future reproductive success might have been enhanced. Second, the domestic processing (DAP) industry benefited to the extent that vessels delivering to domestic processors were able to harvest pollock on fishing grounds free from JVP competition during the interim closure.

During 1988, the first year of the regulation implementing the split season, TACs for pollock were set at 1,300,000 metric tons (mt) and 45,000 mt in the Bering Sea and Aleutian Islands subareas, respectively, (53 FR 894, January 14, 1988). The initial JVP specifications for pollock in the Bering Sea and Aleutian Islands subareas were set at 490,838 mt and 34,090 mt, respectively. The permissible amounts allowed for JVP fishing in these subareas during the first part of the split season were 274,335 mt and 16,336 mt, respectively.

After the 1988 season started on January 15, as many as 90 U.S. catcher vessels operating in the Bering Sea subarea delivered pollock to about 70 foreign processing vessels in the directed fishery. The first part of the split season was closed on February 9, 1988 (53 FR 4178, February 12, 1988). The catch limit during the first part was harvested at an average rate of about 91,000 mt per week.

The Council's preliminary recommendation for the 1989 pollock TAC in the Bering Sea subarea again is 1,300,000 mt, but the JVP proposed apportionment of this amount is only 205,000 mt (53 FR 47998, November 29, 1988). In the Aleutian Islands subarea, the Council's preliminary recommendation for the 1989 pollock TAC is 45,000 mt and the JVP apportionment is 34,090 mt. Under the "split season" amendment, only 160,000 mt in the Bering Sea subarea and 16,336 mt in the Aleutian Islands subarea would be available during the first part of the split season. A total of 176,336 mt would be available, therefore, for harvest during the first part of the 1989 split season. At the rate of harvest of 91,000 mt per week that was experienced during the first part of the split season during the 1988 fishery, the 176,336 mt initially available could be harvested by joint venture fishermen within about two weeks.

Joint venture fishing representatives testified at the Council's September 28–November 1, 1988 meeting that at this level of fishing the split season in the pollock fishery would impose unnecessary and unacceptable economic costs. Since the season would be brief, JVP fishermen would likely depart the Bering Sea and foreign processors would also disperse. Most of the JVP vessels would be idle until the April 15 starting date of the second part of the split season and then return to the Bering Sea to participate again in a very short season. The Council concurred with this analysis, recognizing that the split season was effective in the 1988 fishery, but would have no useful purpose in the 1989 fishery. Spawning pollock would escape the joint venture fishery during the interim closure but would likely be caught in the DAP fishery. Because the DAP apportionment is so large, DAP should have a competitive fishing advantage over JVP without the split season. Any disadvantage to DAP as a result of JVP receiving part of the apportionment would occur even without the split season. The Council, therefore, voted to recommend that the Secretary implement an emergency rule under section 305(e) of the Magnuson Act to substitute the split season regulation with a single JVP pollock fishing season beginning January 15.

Joint venture representatives have provided the Alaska Regional Director, NMFS, examples of operating costs that JVP fishermen would incur if the split season were effective in 1989. Each Seattle-based catcher vessel would spend about $13,000 in fuel to make the round trip to the Bering Sea and back to Seattle. While not every vessel would return to Seattle following the first pollock season, a conservative estimate of the number of vessels that would return is about 50. Since daily fuel consumption is about 800 gallons per day and a round trip takes 18 days, about $13,000 in fuel costs are required per vessel. Under the split season regulation, a vessel operator would spend this amount to return for the second part of the season. Fifty vessels, then, would spend $650,000.

Other factors contributing to increased operating costs are those related to increased maintenance and repair of vessels as a result of longer running time, and reduced labor productivity as a result of lost time on the part of crew members by having to make two round trips. These factors are difficult to quantify, given variation in vessel condition and other employment opportunities for crew members, but would add additional costs on joint venture fishermen.

The Secretary has reviewed this issue and concurs with the Council's recommendations. He finds that continuation of the JVP split season for pollock fishing serves no worthwhile purpose and imposes burdensome and unnecessary costs on the industry that are not acceptable. He is implementing an emergency rule under section 305(e) of the Magnuson Act that authorizes the pollock season to start on January 15 as scheduled, and continues through December 31, 1989, subject to other management measures authorized under 50 CFR Part 675.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act.

The Assistant Administrator also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, under provisions of section 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented as soon as possible if it is to accomplish its intended effect.

The National Marine Fisheries Service prepared an environmental assessment for this action and concluded that no significant impact on the human environment would result from this rule. A copy of this document may be obtained from the address above.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This emergency interim rule is exempt from the requirements of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 675

Fisheries.

Dated: December 30, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 675 is amended as follows:

PART 675—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 675 continues to read as follows:

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

§ 675.20 [Suspended in part]

2. From January 15, 1989 through April 15, 1989, paragraph (b)(3) in § 675.20 is suspended and a new § 675.23 is added to read as follows:

§ 675.23 Seasons.

Directed fishing for pollock in the Bering Sea and Aleutian Islands Management Area is authorized from January 15 through December 31, subject to other provisions of this Part.

[FR Doc. 89–230 Filed 1–3–89; 2:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 86-110]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The National Poultry Improvement Plan (referred to below as the Plan) is a federal-state-industry voluntary program for the improvement of poultry breeding stock and hatchery products. This goal is achieved primarily through the prevention and control of certain poultry diseases. We propose to expand the Plan to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products. We also propose to amend certain provisions of Parts 145 and 147 in order to increase effectiveness of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry disease technology.

DATE: Consideration will be given only to comments postmarked or received on or before February 6, 1989.

ADDRESS: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-110. Comments received may be inspected at USDA, 14th and Independence Ave., SW., Room 1141-South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 848; Federal Building, 6505 Belcrest Rd., Hyattsville; MD 20782; 301-436-5140.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as the Plan) is a cooperative federal-state-industry mechanism for controlling poultry diseases by identifying states, flocks, hatcheries, and dealers that meet certain disease control standards. Customers then have the opportunity to purchase stock that are tested "clean" of certain diseases, or that are produced under disease-prevention requirements.

The Plan currently consists of a variety of programs to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary. However, flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program.

The regulations for this voluntary program are contained in 9 CFR Parts 145 and 147 (referred to below as "the regulations"). These provisions are amended from time to time to incorporate new scientific information and technologies within the Plan. The amendments that we are currently proposing include provisions to:

1. Establish a new "U.S. Sanitation Monitored, Turkeys" program and emblem for turkey flocks and products.
2. Require annual examination, by State Inspectors, of all records pertaining to flocks maintained primarily for production of hatching eggs
3. Lower the minimum age at which turkeys can be blood tested.
4. Change certain procedures for blood testing flocks and individual birds for pullorum-typhoid.
5. Expand and improve the sanitation and flock management requirements of the "U.S. Sanitation Monitored" program for egg-type chicken breeding flocks.
6. Authorize egg yolk testing as an alternative method of monitoring certain multiplier breeding flocks classified as "U.S. M. Gallisepticum Clean."
7. Expand procedures used to determine if a flock is infected with the Mycoplasma organism for which it was tested.
8. Disclaim liability for failure, on the part of users, to adhere to Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation.

Our proposed amendments are consistent with recommendations approved by the voting delegates to the June 1986 and 1988 meetings of the Biennial National Plan Conferences. Participants at these meetings represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating states.

Definitions

We propose to add definitions for the following terms to § 145.1: Exposed, fluff sample, infected flock, medlay, reactor, program, and succeeding flock.

Section 145.10

Section 145.10 lists the terminology and illustrative designs used to designate flocks, products, and states that have qualified for certain official Plan programs under requirements specified in Subparts B through E. We propose to add a new paragraph (k) to § 145.10, containing an illustrative design and terminology for the proposed "U.S. Sanitation Monitored, Turkeys" program (see the discussion under subhead *Section 145.43(f)* for details regarding the qualification procedures and requirements for this proposed new Plan program).

Section 145.12

Section 145.12 contains criteria for the inspection of participating hatcheries and flocks. As now written, this section's paragraph (b) requires that at least 15 percent of the independent and affiliated flocks of each hatchery be inspected annually. We have found, however, that many of the flocks that are inspected are determined to be disease-free. These unnecessary inspections waste state resources. Further, any unwarranted visit to a flock endangers the owner's biosecurity program.

As a means of eliminating unnecessary inspections, we propose to require that State Inspectors conduct an annual examination of all records pertaining to all independent and affiliated flocks maintained primarily for production of hatching eggs. An on-site inspection would be conducted only if a State Inspector found, during his/her examination of records, that a breach of sanitation, blood testing, or other Plan

requirements had occurred at a premises or within a flock.

Section 145.14 Blood Tests

Minimum ages for the taking of blood samples from various types of poultry are currently specified in §§ 145.14(a)(4); 145.23(c)(1)(i), (c)(1)(ii), (e)(1)(i), and (3)(1)(ii); 145.33(c)(1)(i), (c)(1)(ii), (e)(1)(i), and (e)(1)(ii); 145.43(c)(1), (d)(1)(i), (e)(1), and (e)(3); and 145.53(c)(1)(i) and (ii). For purposes of clarity, we propose to delete all of these references and, instead, place minimum age requirements for blood testing within the introductory paragraph to § 145.14.

A minimum age limit is necessary because newly hatched poultry does not have sufficient antibodies for reliable detection, through blood testing, of the diseases covered by the Plan. Chickens develop sufficient antibodies when they are more than 4 months of age; game birds develop them upon reaching sexual maturity or more than 4 months of age, whichever comes first.

When the minimum age limit was established, it was thought that blood testing of turkeys would be more reliable if the birds were 4 months of age or older. However, after consulting with turkey industry experts, we have concluded that turkeys that are more than 12 weeks old will have built up sufficient antibodies for reliable blood testing. We propose, therefore, to change the minimum age for taking blood samples from turkeys, from the current "more than 4 months of age," to "more than 12 weeks of age."

Section 145.14 Minimum Representative Testing Sample

The introductory paragraph to § 145.14 currently closes with the sentence:

> For those programs where a sample of the poultry may be tested in lieu of the entire flock, the poultry tested shall be a representative sample drawn from all pens or units of the flock.

The term "representative sample" is currently not defined in the regulations. Thus, a 60-bird representative sample could be two houses containing the flock and yielding 30 birds each, or ten houses yielding just 6 birds each. In the latter instance, a limited infection might easily be missed. A similar problem exists with respect to the terms "pens" and "units," which are also vague and lack nationally recognized industry definitions.

We propose to require a minimum representative sample of 30 birds per house, with at least 1 bird taken from all pens and units in the house. (The term "house," is used throughout the poultry industry to denote a structure, enclosed by walls and a roof, in which poultry are raised.) All the birds would be tested in houses containing fewer than 30 birds.

Experimental statistical survey studies have established that samples of 30 birds per house will provide a high probability of detecting low levels of infection in poultry flocks. For instance, probability studies reported by Dr. V. Beal, Jr.[1], showed that sampling at this level will provide a 95-percent probability of detecting a 10-percent infection (e.g. 100 infected birds in a 1,000-bird flock).

Section 145.14 Salmonella

Current § 145.1 defines the term "Salmonella" as "any bacteria belonging to the genus Salmonella, including the arizona group" (which causes serious illness in turkeys and which was, until recently, considered to be distinct from Salmonella). Thus, the current use of "Salmonella" throughout most of § 145.14(a) implies that blood testing is carried out under the Plan for all diseases casued by all species of Salmonella. In actuality, however, the only Salmonella classification under the Plan is pullorum-typhoid.

We are, therefore, proposing to substitute the term "pullorum-typhoid" for "Salmonella"—in the current heading and in paragraphs (3), (7), and (9) of § 145.14(a)—where the latter is used to refer to diseases caused by Salmonella. The term "pullorum-typhoid" is used throughout the poultry industry since pullorum and typhoid diseases share common antigens (e.g.-any substance capable of including a specific immune response), which are used for disease testing and identification. Current § 147.5 contains pullorum-typhoid testing procedures, while provisions of the "U.S. Pullorum-Typhoid Clean" classification are specified in current §§ 145.10(b), 145.23(b), 145.33(b), 145.43(b), and 145.53(b).

We are not proposing to change "Salmonella organisms" in current paragraphs (9) and (10) of § 145.14(a), because the use of the term in these paragraphs is scientifically accurate.

Section 145.14(a)(1)

Official blood tests, approved for use in detecting pullorum-typhoid in various classes of poultry, are listed in § 145.14(a)(1). This list currently consists of the standard tube agglutination, microagglutination, rapid serum, and stained antigen, rapid whole-blood tests.

Research conducted at the Animal and Plant Health Inspection Service's Diagnostic Bacteriology Laboratory at Ames, IA,[2] demonstrated that the enzyme-labeled immunosorbent assay (ELISA) test also serves as an effective means of detecting pullorum-typhoid diseases in poultry flocks. We propose, therefore, to add the ELISA test to the list of official blood tests for all classes of poultry. We also propose to reference current footnote 1 of this section (renumbered as footnote 3 under our proposal), which provides information on publications containing accepted ELISA test procedures.

Section 145.14(a)(5)

The last three sentences in current § 145.14(a)(5) state:

> When reactors are found in any flock, or S. pullorum or S. gallinarum isolations are made from baby poultry or fluff samples, the flock may qualify for participation with two consecutive official negative tests. Qualification of this flock, or any other flock on the same premises during the next 12 months, shall be based on the testing of all birds. Such testing shall be conducted by or directly supervised by a State Inspector.

Under our proposal, these sentences would be deleted from § 145.14(a)(5) and the requirements they contain transferred to a proposed new paragraph to be numbered § 145.14(a)(6). Current paragraphs (6) through (10) of § 145.14(a) would then be renumbered as (7) through (11), respectively. In addition to this restructuring our proposal would:

1. Replace the phrase "any other flock on the same premises," as used in the three sentences shown above, with "succeeding flocks." The latter is defined in this proposal as flocks brought onto a premises during the 12 months following the removal of an infected flock. This amendment is proposed for the purpose of clarity and does not change the meaning of the provision.

2. Replace vague references to required "tests" and "testing" in the three sentences shown above, with a specific requirement for an official blood test named in paragraph (a)(1) of § 145.14. This amendment is also proposed for the purpose of clarity and does not change the meaning of the provision.

3. Authorize qualification of a succeeding flock for participation in the Plan with a single negative result to an

[1] Documernts concerning these probability studies may be obtained from Dr. V. Beal, Jr., Animal Health & Depredation Management Systems; PPD; APHIS; USDA; Room 843; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

[2] Documents concerning the ELISA research at Ames may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

official blood test named in paragraph (a)(1) of § 145.14. Current provisions require two consecutive negative tests to qualify a flock in which a reactor has been found. Since the succeeding flock should not contain any reactors (if it does, the two test rule would apply), we believe that a single negative test would be sufficient.

4. Add a provision requiring Official State Agencies to test all birds on premises exposed to birds, equipment, supplies, or personnel from a primary breeding flock during a period when the primary breeding flock was exposed to *S. pullorum* or *S. gallinarum*. In determining exposure, Official State Agencies would evaluate the probability of contacts between the primary breeding flock and (a) infected wild birds, (b) contaminated feed or waste, or (c) birds, equipment, supplies, or personnel from flocks infected with *S. pullorum* or *Gallinarum*.

We believe that this new provision is necessary because primary breeding flocks are the source of breeding stock for multiplier breeding flocks, which in turn supply replacements for meat and egg flocks. Thus, an infection in a primary breeding flock has the capability to quickly spread into all facets of the poultry industry.

Section 145.14(a)(9)

All flocks participating in Plan programs are blood tested for pullorum-typhoid. Since false reactions are common, positive blood tests must be validated. Under current § 145.14(a)(9), validation is by autopsy and bacteriological examination of reactors at a laboratory "designated by the Official State Agency for bacteriological examination." This provision has been redesignated as § 145.14(a)(9) in our proposal. For purposes of simplicity, our proposal requires submission to an "authorized laboratory" (defined in § 145.1 as "a laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in this part").

Our proposal also establishes a maximum time limit—within 10 days from the date of reading an official blood test—for submission of these reactors to the authorized laboratory. Pullorum-typhoid organisms may not remain viable and, therefore, not be detectable, if too much time passes between the initial blood test and the subsequent bacteriological examination. We are not aware of any research that would establish a timeframe for bacteriological examination or retesting. However, based on the experiences of U.S. Department of Agriculture laboratory scientists, we believe that the proposed 10-day-period would assure recovery of the pullorum-typhoid organisms.

We further proposed to provide two additional options for validating positive pullorum-typhoid blood tests: (1) Retesting the serum specimen that produced the positive reaction, and (2) retesting reactors using an official supplemental blood test. These options will allow initial blood test results to be either validated or identified as false reactions without necessitating the slaughter of reactors.

Serum testing would utilize a sample that has been diluted 40 or 50 times from the original specimen. A false reaction to the full-strength specimen will differ significantly from the result produced when the diluted specimen is tested. If the reaction to the retest is positive at the specified dilutions, the reactor and flock would be bacteriologically examined or retested using an official blood test.

The most time consuming option would be to conduct new blood tests. To prevent disease spread during the testing period, the flock would have to be maintained under a security system specified or approved by the Official State Agency.[3] If the retest is positive, the reactors and flock would be bacteriologically examined.

Under our proposal, the Official State Agency would select the option to be used in each circumstance, based on a cost-benefits analysis involving evaluation of such factors as: Ratio of reactors-to-total birds, the value of the reactors and flocks at risk, the necessity for preserving birds from scarce genetic lines, the frequency and ratio of false reactions during recent blood testing, the need for a quick determination of disease existence, and the cost for each retesting option versus the total availability of funds (when the state provides retesting subsidies).

Paragraph (b)(2)(iii) of Sections 145.23, 145.33, 145.43, and 145.53

Participants in the "U.S. Pullorum-Typhoid Clean" program have flocks that have tested negative, or that are derived from flocks that have tested negative, for pullorum-typhoid. The program's procedures for qualifying multiplier breeding flocks, composed of progeny of a primary breeding flock that is intended solely for the production of multiplier breeding flocks, are contained in current paragraph (b)(2)(iii) of §§ 145.23, 145.33, 145.43, and 145.53. This paragraph requires that all flocks, for which qualification is sought, either be blood tested or bacteriologically examined and monitored.

The current bacteriological examination/monitoring program involves bacteriological examinations of 10-day chick mortality and down shed by chicks in the hatcher. The current blood testing requirements are: (a) A sample comprised of at least 25 percent of the birds in the flock has been officially blood tested with no reactors; (b) the percentage of the flock included in the sample may be reduced by 5 percentage points following each year in which there is no evidence of infection on the premises until the required percentage is reduced to zero; and (c) the sample shall include at least 500 birds the first year, 400 the second year, 300 the third year, 200 the fourth year, and 100 the fifth year.

During the nearly two decades since these provisions were added to the regulations, conditions have changed significantly within the poultry industry. Today, virtually all new multiplier breeding flocks, and breeding flocks composed of progeny of a primary breeding flock that is intended solely for the production of multiplier breeding flocks, originate from "U.S. Pullorum-Typhoid Clean" breeding flocks, or from flocks that meet equivalent requirements under the supervision of an Official State Agency. Our experience, compiled during years of monitoring qualified and unqualified flocks, is that flocks that originate from "U.S. Pullorum-Typhoid Clean" or equivalent flocks can be safely qualified for participation in the "U.S. Pullorum-Typhoid Clean" program, without blood testing or bacteriological examination/monitoring, provided no exposure to pullorum-typhoid has occurred.

Under our proposal, the bacteriological monitoring requirement would be deleted. Poultrymen seeking program qualification would not have to blood test a flock located on premises where either no poultry or a flock not classified as "U.S. Pullorum-Typhoid Clean" was located during the previous 12 months, unless the Official State Agency determines that exposure to pullorum-typhoid occurred. When a candidate flock has been exposed, an Authorized Agent would blood test up to 300 birds. In making determinations of exposure—and of how may birds would

[3] The security system would consist of procedures for: (a) Isolating the flock to prevent cross-contamination with other birds, equipment, or supplies on the premises; (b) sanitizing equipment and workers coming in contact with the flock; (c) restricting the movement of live birds, products, equipment, and supplies from the premises; and (d) restricting access to the flock. Individual security systems will differ slightly depending upon such factors as the proximity of other, disease-free flocks and the physical layout of the premises.

be blood tested—the Official State Agency would evaluate: (a) The results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year, (b) the origins of the unclassified flock, and (c) the probability of contacts between the flock for which qualification is being sought and infected wild birds, contaminated feed or waste, or birds, equipment, supplies, or persons from or exposed to flocks infected with pullorum-typhoid.

Section 145.23(d)

Section 145.23 contains qualification procedures and requirements for various official Plan programs for egg-type chicken breeding flocks and products. Paragraph (d) of this section contains provisions for the "U.S. Sanitation Monitored" program, which is designed to prevent and control Salmonellosis in the egg-type chicken breeding-hatching industry. We are proposing to amend paragraph (d) as follows:

1. Paragraph (d)(1)(i) currently requires that flocks originate from a source where "sanitation and management practices, as outlined in § 145.23(d)(1)" are conducted. In fact, a source flock that meets this requirement is a "U.S. Sanitation Monitored" flock. Therefore, for purposes of simplification and clarity, we propose to replace the current language with a specific requirement that the flock originate from a "U.S. Sanitation Monitored" flock.

Many flock owners, who are not Plan participants, utilize good sanitation and management practices. Under our proposal, a flock that did not originate from a "U.S. Sanitation Monitored" flock would be eligible to qualify for the program if:

* * * the meconium from the chick boxes and a sample of the chicks that died within 7 days after birth [4] are examined bacteriologically for Salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

"Meconium" is the fecal matter collected by sexors or initially voided by newly hatched poultry. Any Salmonella that were present in the egg should also be in the meconium. "Serotyping" is the process of determining the exact antigenic identity of a specific organism from the roughly 2,000 Salmonella known to exist.

2. In the recent past, contaminated feed has been a significant source of Salmonella outbreaks. Current paragraph (d) recommends that flock owners should only use feed that has been produced by a certain manufacturing process, under temperatures that will destroy Salmonella. To further reduce the incidence of Salmonella organisms in feed, we propose to change this recommendation to a requirement, and to add additional provisions to further minimize post-manufacture recontamination.

Current paragraph (d) recommends using only feed manufactured in pellet form, or in pellets that are then crumbled into smaller pieces. Our proposal specifies that the pellets shall either be devoid of animal protein, or contain animal protein products produced under the Animal Protein Products Industry (APPI)/Education Salmonella Reduction Program. Salmonella organisms are much less prevalent in feed that does not contain animal protein, and the APPI program includes manufacturing safeguards to prevent post-manufacture recontamination.[5]

Current paragraph (d) recommends subjecting feed to temperatures of 190 degrees F. or above during the pellet manufacturing process. However, either time or pressure can be factored in to destroy Salmonella at lower temperatures. Under our proposal, feed would be subjected to a temperature of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the pellet manufacturing process.[6]

Salmonella organisms are not destroyed during the manufacture of mash (a combination of grain and protein/vitamin supplements ground into small particles) feeds. But, although not as safe as pellet or crumbled feed, mash is substantially less expensive. Our proposal allows use of mash feeds because many flock owners could not afford to participate in the voluntary "U.S. Sanitation Monitored" program if use of mash feeds were prohibited. This is because feed expenditures account for as much as 70 percent of a flock owner's production costs. If a flock owner uses mash feed, we prefer for him/her to remain a participant in the "U.S. Sanitation Monitored" program, since the program's other required sanitation and management practices may compensate for the failure to use only pellet feeds. We are, however, proposing to minimize the hazard from mash by restricting use of mash feeds to only mash that is either devoid of animal protein, or that contains only animal protein products processed in a pelleting mill to destroy Salmonella.

3. The illustrative "U.S. Sanitation Monitored" design (see current § 145.10(d), figure 5) is used by the breeding-hatching industry as proof that hatching eggs and newly hatched chicks were produced by a flock maintained under certain sanitation and management practices to reduce the incidence of Salmonella. We believe, however, that the current "U.S. Sanitation Monitored" program is flawed in that it does not contain provisions for detecting group D Salmonella in flocks that have qualified, or are qualifying, for this classification. At least one of the Salmonella organisms belonging to this group can be transmitted from an infected bird to its egg, and then on to the resulting chick.

Under our proposal, blood and environmental samples would be collected from the flock and examined for group D salmonella at an authorized laboratory, using bacteriological and serological procedures described in current §§ 147.11 and 147.12 of this chapter. Cultures from positive samples would be serotyped to determine the antigenic identity of the specific organism involved (roughly 2,000 different Salmonella are known to esist).

Chickens are blood tested when the flock is more than 4 months of age (see the discussion under subhead *Section 145.14; Blood Tests*). Environmental samples should be collected at the same time because blood tests will not reveal if a Salmonella organism, which has not yet infected any birds within the flock, is nevertheless in the flock's environment. Also, a bird may be infected, but not producing serologic reactions when a blood test is conducted.

We are proposing that 300 of the birds in the flock would be blood sampled and that all birds with positive or inconclusive reactions, up to a maximum of 25 birds would be submitted to an authorized laboratory for examination. We are not aware of any research establishing a sample size

[4] The number of dead chicks to be sampled would be determined by the Official State Agency, based on the size of the flock, the rate of mortality within the flock, and the total number of dead chicks. We are not aware of any research establishing timeframes for bacteriological examination of dead chicks for Salmonella. To be effective, however, the examinations must be performed while Salmonella organisms are viable. The 7-day limitation is used by United States Department of Agriculture laboratory scientists and had proved successful in this regard.

[5] Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poulty Diseases Staff; VA; APHIS; USDA, Room 848, Federal Building; 6505 Belcrest Road; Hyattsville, MD 20782.

[6] Documents concerning time, temperature, and pressure requirements for the pellet manufacturing process may be obtained by writing Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

for chickens blood tested, or reactors examined, for group D Salmonella. Our proposed limits of 300 birds and 25 reactors have proven effective when used by United States Department of Agriculture scientists conducting similar tests for other salmonellas. For this reason, we believe that this sampling pattern would also prove effective in testing for group D Salmonella.

4. Paragraph (d) currently recommends that Official State Agencies apply two monitoring procedures to determine the status and effectiveness of each flock's sanitation practices. We believe that monitoring is important enough to be made a requirement, but also believe that the currently recommended monitoring procedures should be amended.

The first of the current procedures involves culturing the surface of cased eggs for fecal contaminating organisms. This procedure is unnecessary, and we propose to delete it, because current regulations already provide for the sanitizing of hatching eggs.

The second procedure involves periodic culturing of dead-in-shell eggs, a large category that includes: (a) Eggs in which a recognizable chick was formed, but did not hatch; (b) eggs that were cracked, allowing entry of outside organisms; and (c) eggs, known as dead germ eggs, in which the yolk has not been completely brought into the embryo's body. We propose to require a monthly bacteriological examination of a minimum of 30 dead germ eggs,[7] since these eggs are easier and more reliable to culture than cracked eggs or those with more developed embryos.

5. Several university and industry studies [8] have revealed that at least one strain of *Salmonella enteritidis* can be transmitted from an infected bird to its egg, and then on to the resulting chick. To ensure that products sold under the "U.S. Sanitation Monitored" classification are free of *Salmonella enteritidis* safe and wholesome, we propose to amend paragraph (d) to prohibit classification of a flock if any *Salmonella enteritidis* organism is isolated from a bird in a breeding flock or dead-germ egg culture.

On the other hand, our proposal will permit classification when a *Salmonella enteritidis* organism is isolated from an environmental sample collected from the flock—if certain egg and flock retesting procedures are followed and no further positive results are found. This is because environmental contamination can result from sources other than the birds in the flock, such as an infected mouse.

Section 145.43(c)

Section 145.43 contains qualification procedures and requirements for Plan programs for turkey flocks and products, including "U.S. M. Gallisepticum Clean." Currently, flocks qualify for participation in this program on the basis of negative blood tests, and no subsequent retesting is required. We believe that retesting is necessary to ensure the continued negative status of classified flocks.

Under our proposal, a minimum of 30 samples from male flocks and 60 samples from female flocks [9] must be retested to retain a "M. Gallisepticum Clean" classification. Retesting would be conducted when the flock is 28–30 weeks of age in order to reconfirm its disease-free status shortly before the start of its first egg-laying cycle.

Section 145.43(f)

Section 145.43 contains qualification procedures and requirements for the official Plan programs for turkey flocks and products. Under our proposal, a new paragraph (f) would be added to § 145.43, containing proposed provisions for a new "U.S. Sanitation Monitored, Turkeys" program.

Our proposal is based on an actual program that has been in effect in Minnesota for seven years. According to Minnesota poultry health officials, their program has proven to be a practical and effective program for reducing the Salmonella level in Minnesota turkeys.

The proposed monitoring, testing, and management requirements for the new Plan program include:

Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after birth, or both would be: (a) Examined bacteriologically at an authorized laboratory for Salmonella as part of the qualification requirements for breeding flocks produced by primary breeders, and (b) cultured from poults produced by hatching eggs from each flock as a means of evaluating the effectiveness of the proposed control procedures. The number of dead poults to be sampled would be determined by the Official State Agency, based on the size of the flock, the rate of mortality within the flock, and the total number of dead poults. We are not aware of any research establishing timeframes for bacteriological examination of dead poults for Salmonella. To be effective, however, the examinations must be performed while Salmonella organisms are viable. The 10-day limitation used by United States Department of Agriculture laboratory scientists has proven successful in this regard.

Feed for turkeys in the candidate breeding flock shall meet the following requirements:

(i) All feed manufactured in pellet form must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process.

(ii) Initial feed (for newborn poults to 2 weeks of age) shall be manufactured in pellet form, either with no animal protein or with animal protein products produced under the Animal Protein Products Industry/Education Salmonella Reduction Program.[6]

(iii) Succeeding feed (for turkeys 2 weeks or older) shall be as described in (ii) above, mash that contains no animal protein products, or mash that contains an animal protein products supplement that has been manufactured in pellet form and crumbled.

During its initial 2 weeks of life, a young turkey is especially vulnerable to Salmonella infection and should only be fed pellets produced under the prescribed conditions, because Salmonella organisms are destroyed during the manufacture of this type of feed. By the third week of its life, the young turkey's natural immune system should be fully developed and capable of resisting colonization by the low levels of Salmonella that may be found in a mash feed. (See paragraph No. 2, subhead *Section 145.23(d)* for a more detailed discussion of pellet and mash feeds.)

Owners of flocks found infected with a paratyphoid Salmonella may vaccinate these flocks with an autogenous bacterin with a potentiating agent.

This provision would permit use of a vaccine that contains a killed Salmonella and an agent that produces a slow, sustained release to stimulate increased immunity. This type of vaccine is cultured from Salmonella already present in the flock, with lab work and preparation often performed entirely intra-state. We propose, therefore, to footnote this provision to

[7] Statistics demonstrating the effectiveness of testing 30-egg cultures may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

[8] Documents concerning these research studies may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

[9] This has proven to be an effective sample size when retesting for retention of "U.S. M. Meleagridis Clean" classifications. The minimum sampling pattern of 30 samples from male flocks and 60 from female flocks has proven effective when used by United States Department of Agriculture laboratory scientists conducting similar tests for similar diseases. For this reason, we believe that this sampling pattern would also prove effective in testing for M. Gallisepticum.

inform flock owners that preparation and use of this type of vaccine may be regulated by State and Federal statutes.

Environmental samples shall be taken by an Authorized Agent, as described in § 147.12 * * * * and examined bacteriologically at an authorized laboratory for Salmonella.

Flock owners participating in the "U.S. Sanitation Monitored, Turkeys" program are required to comply with good sanitation and management practices. However, Salmonella organisms may be brought into a flock's environment by wild birds, infected mice, unauthorized visitors, and other means that are beyond the flock owner's control. Under our proposal, therefore, environmental sampling would be conducted:

1. At 12–20 weeks of age, when candidate flocks are blood tested for qualification in the Plan's various voluntary programs.

2. At 35–50 weeks of age and from each molted flock at midlay, to ensure that the flock's environment continues to be Salmonella-free.

3. After the flock is removed, to ensure that Salmonella-free birds will not be placed in a contaminated laying house. This is necessary because we know that at least one Salmonella organism can be transmitted from an infected bird through its egg to the new poult.

Section 145.53(c)(1)(ii)(A)

Current § 145.53(c)(1)(ii)(A) describes one of two alternate testing procedures used for retention of the "U.S. M. Gallisepticum Clean" classification for waterfowl, exhibition poultry, and game bird multiplier breeding flocks. This requirement is for a random sample of serum from at least 2 percent of the birds in the flock to be tested.

We propose to revise the paragraph to allow use of a random sample of either serum or egg yolk obtained from at least 2 percent of the birds. Egg yolk testing is currently listed—in §§ 145.23(c)(1)(ii)(C) and 145.33(c)(1)(ii)(C)—as an approved procedure for retention of the "U.S. M. Gallisepticum Clean" classification for egg-type and meat-type multiplier chicken breeding flocks. Egg yolk testing should have also been authorized for waterfowl, exhibition poultry, and game birds, but was inadvertently overlooked when the chicken flock uses were approved. We now propose to correct this lapse.

This change should encourage greater participation from the gamebird segment of the poultry industry, since it would provide another method for monitoring and testing game bird flocks, which are often difficult to test serologically. Greater participation should, in turn, lead to reduced levels of *M. gallisepticum* exposure, infection, and spread.

Section 147.6

Paragraph (b) to § 147.6 contains supplemental procedures to be used when a flock tests "suspicious" for *Mycoplasma gallisepticum, M. synoviae,* and *M. meleagridis.* Current § 147.6(b)(5) specifies that flocks shall be considered infected by the Official State Agency if HI (hemagglutination inhibition) titers of 1:80 or SPD (serum plate dilution) titers of 1:10 are found. A "titer of 1:80" is a positive reaction to a solution that is 1 part serum and 80 parts saline.

We believe, however, that culturing techniques should be used when a positive test is not supported by clinical evidence. Thus, under our proposal, culturing would be required if the supplemental tests are positive, but active air sac lesions, sinusitis, synovitis, or other clinical signs of a respiratory disease are not evident.

We also propose to add the enzyme-labeled immunosorbent assay (ELISA) test to § 147.6(b)(5) as an authorized supplemental test for mycoplasma. The manufacturer has included recommended titers for *Mycoplasma gallisepticum, M. synoviae,* and *M. meleagridis* in the instructions that accompany every test. We are not aware of any research establishing more effective titers for these diseases, therefore we are proposing to adopt the manufacturer's recommendations.

Section 147.25

Section 147.25 describes authorized methods of fumigating hatching eggs and hatchery equipment, including the use of formaldehyde as a fumigant. Due to concerns over possible health hazards, the Occupational Safety and Health Administration (OSHA) has published safety standards for formaldehyde use. Our proposed amendment to the introductory paragraph of § 147.25 would:

1. Inform readers of the regulations of the existence of the OSHA standards and of their publication in the Dec. 4, 1987 **Federal Register** (52 FR 46168, Docket Nos. H–225, 225A, and 225B).

2. Disclaim any liability for failure on the part of the user to adhere to the OSHA standards.

Miscellaneous

We also propose to make certain nonsubstantive changes in the regulations for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Plan is a cooperative federal-state program. Participation is voluntary. Proposals to change provisions of this program are based on recommendations of the Biennial National Plan Conference, which included representatives of member states, hatcheries, dealers, flock owners, and breeders. Plan participants requested that we propose amendments to the regulations to incorporate new technology and information within the Plan.

The amendments proposed in this document should not have a significant economic impact on the large number of small entities in the poultry industry, and should not cause significant changes in the cost of producing or buying poultry and poultry products, or in the amount of poultry and poultry products marketed because:

1. The proposed annual examination of all records pertaining to flocks maintained primarily for production of hatching eggs should enable official State Agencies to identify more of the flocks that have incurred a possible disease exposure. This should increase the effectiveness of the annual on-site inspection program, but will neither increase nor disease the number of inspections conducted.

2. Changing the minimum age of blood testing turkeys would permit testing one month earlier than under current rules, but will neither increase nor decrease the number of birds tested annually.

3. Amendments to certain of the Plan's testing and monitoring procedures are proposed to incorporate new technology and research findings. These changes would increase effectiveness and permit use of alternative tests and montoring procedures for disease prevented and controlled by Plan programs.

4. Proposed amendments to the provisions of the "U.S. Sanitation Monitored" program would result in slight increase in producer costs for additional testing. However, these same amendments should result in a slight reduction in the egg and chick mortality for participating flocks. It is difficult to project the degree to which these new producer costs and savings would be offset under our proposal, because the regulations would allow flock owners to choose among testing and feed alternatives. Nevertheless, we are certain that net costs or savings resulting from the changes we are proposing would be insignificant, in terms of overall productions costs, and would not affect the wholesale or retail cost of poultry or poultry products.

5. Cost-benefits to producers who decide to participate in the proposed new "U.S. Sanitation Monitored, Turkey" program would also roughly balance out. Producers would incur a small additional cost for required sanitation measures (although many producers are already engaging in some or all of these sanitation practices). The primary purpose of these measures is to reduce the incidence of Salmonella in the flock, but reduced Salmonella levels would, in turn, result in a slight increase in the number of surviving eggs and poults. The experience of the turkey industry in Minnesota—where a "U.S. Sanitation Monitored, Turkeys" program has been underway for seven years—is that profits from the sale of the additional eggs and poults roughly equals the cost of the additional sanitation measures.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Services has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, National Poultry Improvement Plan, Poultry and poultry products.

Accordingly, we propose to amend regulations contained in 9 CFR Parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for Part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d)

§ 145.1 [Amended]

2. The definitions in § 145.1 would be placed in alphabetical order and the paragraph designations would be removed.

3. Section 145.1 would be amended by adding new definitions in alphabetical order to read as follows:

§ 145.1 Definitions.

* * * * *

Exposed (Exposure). Threatened by infection resulting from contact with birds, equipment, personnel, supplies, or any article infected with, or contaminated by, communicable poultry disease organisms.

* * * * *

Fluff sample. Feathers, shell membrane, and other debris resulting from the hatching of poultry.

* * * * *

Infected flock. A flock in which an authorized laboratory has discovered one or more birds infected with a communicable poultry disease for which a program has been established under the Plan.

* * * * *

Midlay. Approximately 2–3 months after a flock begins to lay or after a molted flock is put back into production.

* * * * *

Program. Management, sanitation, testing, and monitoring procedures which, if complied with, will qualify, and maintain qualification for, designation of a flock, products produced from the flock, or a state by an official Plan classification and illustrative design, as described in § 145.10.

* * * * *

Reactor. A bird that has a positive reaction to a test, required or recommended in Parts 145 or 147 of this chapter, for any poultry disease for which a program has been established under the plan.

* * * * *

Succeeding flock. A flock brought onto a premises during the 12 months following removal of an infected flock.

* * * * *

4. In § 145.10, a new paragraph (k) would be added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(k) *U.S. Sanitation Monitored, Turkeys.* (See § 145.43(f).)

* * * * *

5. Paragraph (b) of § 145.12 would be revised to read as follows:

§ 145.12 Inspections.

* * * * *

(b) The records of all flocks maintained primarily for production of hatching eggs shall be examined annually by a State Inspector. On-site inspections of flocks and premises will be conducted if the State Inspector determines that a breach of sanitation, blood testing, or other provisions has occurred for Plan programs for which the flocks have or are being qualified.

6. Section 145.14 would be amended as follows:

a. The introductory paragraph would be revised.

b. Paragraph (a)(1) would be revised and a new footnote number "1" would be added.

c. Paragraph (a)(3) would be amended by removing "Salmonella" and inserting "pullorum-typhoid".

d. Paragraph (a)(4) would be removed and marked as [Reserved].

e. Paragraph (a)(5) would be amended by removing the last three sentences.

f. Paragraphs (a) (6) through (10) would be redesignated as paragraphs (a) (7) through (11) respectively and a new paragraph (a)(6) and footnote 2 would be added.

g. Newly redesignated paragraph (a)(8) would be amended by removing "with Salmonella antigens of" and inserting "for pullorum-typhoid in".

h. Newly redesignated paragraph (9) would be revised.

i. Newly redesignated paragraph (10) would be amended by removing "upon which a Salmonella classification is based" and inserting "for pullorum-typhoid".

j. Footnote number "1" and the reference in paragraph (b)(1) would be renumbered "3".

As amended § 145.14 would read as follows:

§ 145.14 Blood testing.

Poultry must be more than 4 months of age when blood tested for an official

classification: *Provided*, That turkeys may be blood tested at more than 12 weeks of age under Subpart D, while game birds may be blood tested under Subpart E when more than 4 months of age or upon reaching sexual maturity, whichever comes first. Blood samples for official tests shall be drawn by an Authorized Agent or State Inspector and tested by an authorized laboratory, except that the stained antigen, rapid whole-blood test for pullorum-typhoid may be conducted by an Authorized Agent or State Inspector. For Plan programs in which a representative sample may be tested in lieu of an entire flock, the minimum number tested shall be 30 birds per house, with at least 1 bird taken from each pen and unit in the house. All birds must be tested in houses containing fewer than 30 birds.

(a) *For Pullorum-Typhoid.* (1) The official blood tests for pullorum-typhoid shall be the standard tube agglutination test, the microagglutination test, the enzyme-labeled immunosorbent assay test (ELISA), or the rapid serum test for all poultry; and the stained antigen, rapid whole-blood test for all poultry except turkeys. The procedures for conducting official blood tests are set forth in §§ 147.1, 147.2, 147.3, and 147.5 of this chapter and referenced in footnote 3 of this section. Only antigens approved by the Department and of the polyvalent type shall be used for the rapid whole-blood test. All microtest antigens and enzyme-labeled immunosorbent assay reagents shall also be approved by the Department.[1]

* * * * *

(6) When reactors are found in any flock, or *S. pullorum* or *S. gallinarum* organisms are isolated by an authorized laboratory from serum or blood from baby poultry, or from fluff samples produced by hatching eggs, the infected flock shall qualify for participation in the Plan with two consecutive negative results to an official blood test named in paragraph (a)(1) of this section. A succeeding flock must be qualified for participation in the Plan's pullorum-typhoid program with a negative result to an official blood test named in paragraph (a)(1) of this section. Testing to qualify flocks for Plan participation must include the testing of all birds in infected and succeeding flocks, and shall be performed or physically supervised by a State Inspector. If the State Inspector determines that a primary breeding flock has been exposed to *S. pullorum* or *S. gallinarum*,[2] the Official State Agency shall require:

(i) The taking of blood samples—performed by or in the presence of a State Inspector—from all birds on premises exposed to birds, equipment, supplies, or personnel from the primary breeding flock during the period when the State Inspector determined that exposure to *S. pullorum* or *S. gallinarum* occurred.[2]

(ii) The banding of all birds of these premises—performed or physically supervised by a State Inspector—in order to identify any bird that tests positive; and

(iii) The testing of blood samples at an authorized laboratory using an official blood test named in paragraph (a)(1) of this section.

* * * * *

(9) Poultry from flocks undergoing qualification testing for participation in the Plan, that have a positive reaction to an official blood test named in paragraph (a)(1) of this section, shall be evaluated for pullorum-typhoid infection. The Official State Agency shall select one or more of the following procedures to be used in each circumstances, based on a cost-benefits analysis involving evaluation of such factors as: The value of the reactors and flocks at risk; the necessity for preserving birds from scarce genetic lines; the need for a quick determination of disease existence; and the cost for each retesting option versus the total availability of funds (when the state provides retesting subsidies):

(i) Reactors shall be submitted to an authorized laboratory for bacteriological examination. If there are more than 4 reactors in a flock, a minimum of 4 reactors shall be submitted to the authorized laboratory; if the flock has 4 or fewer reactors, all of the reactors must be submitted. The approved procedure for bacteriological examination is set forth in § 147.11 of this chapter. When reactors are submitted to the authorized laboratory within 10 days from the date of reading an official blood test named in paragraph (a)(1) of this section, and the bacteriological examination fails to demonstrate pullorum-typhoid infection, the Official State Agency shall presume that the flock has no pullorum-typhoid reactors.

(ii) The serum specimen that produced the positive reaction shall be retested at an authorized laboratory in accordance with procedures set forth in § 147.1 of this chapter for the standard tube agglutination test, or in § 147.5 of this chapter for the microagglutination test for pullorum-typhoid. If the reaction to this retest is positive in dilutions of 1:50 or greater for the standard tube agglutination test, or 1:40 or greater for the microagglutination test, additional examination of the bird and flock will be performed in accordance with paragraph (a)(9)(i) or (a)(9)(iii) of this section.

(iii) The reactors shall be retested within 30 days using an official blood test named in paragraph (a)(1) of this section. If this retest is positive, additional examination of the reactors and flock will be performed in accordance with paragraph (a)(9)(i) of this section.

During the 30-day period, the flock must be maintained under a security system, specified or approved by the Official State Agency, that will prevent physical contact with other birds and assure that personnel, equipment, and supplies that could be a source of pullorum-typhoid spread are sanitized.

7. Paragraph (b)(2)(iii) of §§ 145.23, 145.33, 145.43, and 145.53 would be revised as follows:

§§ 145.23, 145.33, 145.43, 145.53 Terminology and classification; flocks and products.

* * * * *

(b) * * *

(2) * * *

(iii) The flock is located on a premises where either no poultry or a flock not classified as U.S. Pullorum-Typhoid Clean were located during the previous 12 months: *Provided*, That an Authorized Agent must blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested the Official State Agency shall evaluate the results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and (a) infected wild birds, (b) contaminated feed or waste, or (c) birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

* * * * *

[1] The criteria and procedures for Department approval of antigens and reagents may be obtained from Veterinary Biologics, BBEP, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] In making determinations of exposure, the State Inspector shall evaluate both evidence proving that exposure occurred and circumstances indicating a high probability of contacts with: infected wild birds; contaminated feed or waste; or birds, equipment, supplies, or persons from or exposed to flocks infected with *S. pullorum* or *S. gallinarum*.

8. Section 145.23 would be amended as follows:

a. Paragraph (d)(1)(i) would be revised.

b. Paragraph (d)(1)(ii) would be redesignated as paragraph (d)(1)(iv) and a new paragraph (d)(1)(ii) and footnote 4 would be added.

c. Paragraph (d)(1)(iii) would be removed.

d. Paragraph (d)(1)(iv) would be redesignated as paragraph (d)(1)(iii).

e. Paragraph (d)(1)(v) would be redesignated as paragraph (d)(1)(vii) and a new paragraph (d)(1)(v) would be added.

f. Paragraph (d)(1)(vi) would be revised and redesignated as paragraph (d)(1)(viii), and a new paragraph (d)(1)(vi) would be added.

g. A new paragraph (d)(1)(ix) would be added.

h. Paragraph (d)(2) would be removed, and paragraphs (d)(3) and (4) would be redesignated as paragraphs (d)(4) and (5), respectively.

i. New paragraphs (d)(2) and (3) would be added.

As amended § 145.23 would read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) *U.S. Sanitation Monitored.*

(1) * * *

(i) The flock originated from a U.S. Sanitation Monitored flock, or meconium from the chick boxes and a sample of chicks that died within 7 days after birth are examined bacteriologically for salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(ii) All feed fed to the flock shall meet the following requirements:

(*A*) Pelletized feed shall contain either no animal protein or only animal protein products produced under the Animal Protein Products Industry (APPI)/ Education Salmonella Reduction Program [4], and must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process;

(*B*) Mash feed shall contain either no animal protein or only animal protein products supplement manufactured in pellet form and crumbled.

* * * * *

[4] Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

(v) Environmental samples shall be collected from the flock by an Authorized Agent, as described in § 147.12 of this chapter, when the flock is more than 4 months of age. The samples shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(vi) Blood samples from 300 birds shall be officially tested with pullorum-typhoid antigen when the flock is a minimum of more than 4 months of age. All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D salmonella, as described in § 147.11 of this chapter. Cultures from positive samples shall be serotyped.

* * * * *

(viii) Hatching eggs produced by the flock are incubated in a hatchery that is in compliance with the recommendations in §§ 147.23 and 147.24(b) of this chapter, and either § 147.25 or a sanitization procedure approved by the Official State Agency.

(ix) A minimum of 30 dead-germ eggs, taken monthly from randomly selected hatches from the flock, shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(2) A flock shall not be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from a sample collected from the flock in accordance with paragraph (d)(1)(vi) or (d)(1)(ix) of this section.

(3) A flock shall be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from an environmental sample collected from the flock in accordance with paragraph (d)(v) of this section: *Provided,* That testing is conducted in accordance with paragraphs (d)(1)(vi) and (d)(1)(ix) of this section 30 days and no positive samples are found.

§§ 145.24, 145.34, 145.44, and 145.54 [Amended]

9. Paragraph (a)(1)(ii) of §§ 145.24, 145.34, 145.44, and 145.54 would be amended by removing "found in waterfowl" and inserting "found within the preceding 24 months in waterfowl", and by removing the phrase "for a period of two years".

10. Section 145.43 would be amended as follows:

a. Paragraph 145.43(c)(1) would be amended by removing "§ 145.14(b)." and inserting "§ 145.14(b): *Provided,* That to retain this classification, a minimum of 30 samples from male flocks and 60 samples from female flocks shall be retested at 28–30 weeks of age.".

b. Paragraphs (c)(1), (d)(1)(i), and (e)(1) and (3) of § 145.43 would be amended by removing the phrase "4 months of age" and inserting the phrase "12 weeks of age".

c. Footnote number "2" would be revised, and the footnote and the reference in paragraph (d)(2) of § 145.43 would be renumbered "5".

d. A new paragraph (f) and footnote 6 would be added.

As amended § 145.43 would read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(2) * * *

[5] See footnote 3 to § 145.14(b)(1) of this chapter.

§ 145.43 Terminology and classification; flocks and products

* * * * *

(f) *U.S. Sanitation Monitored, Turkeys.* A flock or hatchery whose owner is controlling or reducing the level of salmonella through compliance with sanitation and management practices as described in Subpart C of Part 147 of this chapter, and where the following monitoring, testing, and management practices are conducted:

(1) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after birth, or both, from each candidate breeding flock produced by a primary breeder, are examined bacteriologically at an authorized laboratory for Salmonella.

(2) The poults for the candidate breeding flock are placed in a building that has been cleaned, disinfected, and examined bacteriologically for the presence of Salmonella by an Authorized Agent, as described in § 147.12.

(3) Feed for turkeys in the candidate breeding flock shall meet the following requirements:

(i) All feed manufactured in pellet form must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process.

(ii) Initial feed (for newborn poults to 2 weeks of age) shall be manufactured in pellet form, either with no animal protein or with animal protein products produced under the Animal Protein

Products Industry/Education Salmonella Reduction Program.[5]

(iii) Succeeding feed (for turkeys 2 weeks or older) shall be as described in (f)(3) (ii) of this section, mash that contains no animal protein products, or mash that contains an animal protein products supplement that has been manufactured in pellet form and crumbled.

(4) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12, from each flock at 12–20 weeks of age and examined bacteriologically at an authorized laboratory for Salmonella.

(5) Owners of flocks found infected with a paratyphoid Salmonella may vaccinate these flocks with an autogenous bacterin with a potentiating agent.[6]

(6) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12, from each flock at 35–50 weeks of age and from each molted flock at midlay, and examined bacteriologically at an authorized laboratory for Salmonella.

(7) Environmental samples shall be taken, by an Authorized Agent using the procedures described in § 147.12, from the laying house after the flock is removed, and examined bacteriologically at an authorized laboratory for Salmonella.

(8) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after birth, or both shall be cultured from poults produced from hatching eggs from each flock, as a means of evaluating the effectiveness of the control procedures.

§ 145.53 [Amended]

11. Paragraph (c)(1)(ii)(A) of § 145.53 would be amended by revising the phrase "a random sample of at least" to read "a random sample of serum or egg yolk from at least".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

12. The authority citation for Part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

[5] Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I.L. Peterson: Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[6] Preparation and use of this type of vaccine may be regulated by state and federal statutes.

§ 147.6 [Amended]

13. Paragraph (b) of § 147.6 would be amended by removing the phrase "additional agglutination" and inserting "additional culturing procedures, and agglutination".

14. Paragraph (6)(5) of § 147.6 would be revised as follows:

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

* * * * *

(b) * * *

(5) If HI titers of 1:80, positive enzyme-labeled immunosorbent assay (ELISA) titers, or SPD titers of 1:10 or higher are found, in conjunction with any of the criteria described in (a)(1) of this section, the Official State Agency shall presume the flock to be infected. If the indicated titers are found, but none of the criteria described in (a)(1) of this section are evident, tracheal swabs from 30 randomly selected birds shall be taken promptly and cultured individually for Mycoplasma, and additional tests conducted in accordance with (b)(6) of this section before final determination of the flock status is made.

15. Section 147.25 would be amended by adding a sentence to the end of the introductory paragraph to read as follows:

§ 147.25 Fumigation.

* * * APHIS disclaims any liability in the use of formaldehyde for failure on the part of the user to adhere to the Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation, published in the Dec. 4, 1987 **Federal Register** (52 FR 46168, Docket Nos. H–225, 225A, and 225B).

* * * * *

Done Washington, DC, this 3rd day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–268 Filed 1–5–89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

Sequestration of Witnesses Interviewed Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 8, 1988 (53 FR 45768) the Commission published for public comment a rule which provides that all persons compelled to appear before NRC representatives under subpoena in connection with an agency investigation (and their counsel, if any) shall, unless otherwise authorized by the NRC official conducting the investigation, be sequestered from other interviewees in the same investigation. The comment period for this proposed rule was to have expired on January 10, 1989. Counsel, on behalf of Nuclear Management and Resources Council (NUMARC) and others, has requested a thirty-day extension of the comment period in order to provide meaningful comments on the proposed rule. The Commission has decided to extend the comment period for an additional thirty days. The extended comment period now expires on February 9, 1989.

DATE: The comment period has been extended and now expires February 9, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Carolyn Evans, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–1632.

Dated at Rockville, Maryland this 30th day of December 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–242 Filed 1–5–89; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 88–1511]

Regulatory Capital Requirements for Insured Institutions

Date: December 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing.

SUMMARY: The Federal Home Loan Bank Board (the "Board") will hold a public hearing on its proposed regulation establishing new minimum regulatory capital requirements for insured institutions. The hearing is intended to allow the Board to benefit from the views of the public on the important issues raised in this proposal.

DATES: The public hearing will be held on Thursday, February 9, and Friday, February 10, 1989 from 9:00 a.m. to 5:00 p.m. Written requests to participate must be received no later than 5:00 p.m. on January 23, 1989.

ADDRESSES: Written requests to participate in the public hearing must be mailed to: Secretary, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC 20552 or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

Hearing Location: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G St. NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331–4592; Carol Larson, Accounting Fellow, (202) 331–4577; John Robinson, Director, Policy Analysis, (202) 331–4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; Donald Bisenius, Director, Financial Analysis Division, (202) 377–6759, Office of Policy and Economic Research; Deborah Dakin, Regulatory Counsel, (202) 377–6445; Theresa Stark, Attorney, (202) 377–7054; Karen Solomon, Associate General Counsel, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the Board proposed to amend its regulations on the amount and composition of regulatory capital required for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions"). Board Res. No. 88–1342, 53 FR 51800 (December 23, 1988). The 90-day comment period on this proposal will expire on March 23, 1989. This proposal would significantly affect the capital requirements for all insured institutions. The Board believes that a public hearing to allow interested members of the public to express their views is an appropriate supplement to the opportunity for written comments during the comment period. It has therefore scheduled a public hearing for February 9 and 10, 1989.

Participants in the hearing are invited to address all aspects of the proposed rule and are referred to the proposal for the issues on which the Board particularly desires public comment. Persons wishing to participate in the hearings should send a written request to participate to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, to be received no later than close of business on January 23, 1989. Requests may be hand-delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday during the same period.

The request to participate in the hearing must include the following information:

(1) The name, address, and business telephone number of the participant; (2) the entity that the participant will be representing; (3) a brief summary of the participant's remarks; and (4) the preference, if any, for the date and time at which the participant wishes to testify. While the Board will attempt to accommodate the participants as to time, it cannot guarantee that it will be able to honor all such expressed preferences. Moreover, the Board may allocate the available time according to the various issues raised in the proposals. Participants should, therefore, be selective in identifying the topics they wish to address.

Depending on the number of requests received, participants may be limited in the length of their oral presentations; they will be advised in writing of the time scheduled for their presentation. The Board reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available. Additionally, the Board anticipates establishing panels of participants for presentations. It will take steps to ensure that the designated witnesses or panels constitute a representative sample of the types of participants and of the views of those who wish to participate.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–233 Filed 1–5–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA–41–88]

Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations amending temporary regulations which were published in the **Federal Register** on September 30, 1985, and were amended May 13, 1987, relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency by the taxpayer and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1989. The regulations are proposed to apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985, and on or before January 10, 1994. However, if legislation is enacted extending the tax refund offset program beyond January 10, 1994, the regulations are proposed to apply to refunds payable through the date to which such legislation extends the program.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R (IA–41–88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall, 202–566–4811 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend temporary Procedure and Administration Regulations (26 CFR Part 301) under

section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of Title 31, United States Code. This document proposes to adopt the amendments to those temporary regulations as amendments to the final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary amendments. For the text of the temporary regulations, see FR Doc. (T.D. 8239) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-244 Filed 1-3-89; 2:39 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Cape Cod National Seashore; Off-Road Vehicle Regulations

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule modifies the vehicle routes and travel restrictions at Cape Cod National Seashore established by the existing Cape Cod Off-Road Vehicle Regulations, which were adopted on September 3, 1985.

The proposed rule is a result of the Department of the Interior's review of the existing Cape Cod National Seashore Off-Road Vehicle Management Plan.

DATES: Written comments will be accepted through February 21, 1989.

ADDRESS: Comments should be addressed to: Herbert S. Cables, Jr., Regional Director, North Atlantic Region, 15 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Tony Bonanno, Chief, Ranger, Cape Cod National Seasshore, South Wellfleet, MA 02663, Telephone: (508) 349-3785.

SUPPLEMENTARY INFORMATION:

Background

Off-road vehicle (ORV) use on the beaches, primarily for fishing, predates the establishment of Cape Cod National Seashore (the Seashore) in 1961. The National Park Service (NPS) managed and regulated ORV use under local restrictions for a number of years after the establishment of the Seashore. However, in 1974, concerns about the impact of ORV use at the Seashore led the NPS to initiate a comprehensive 5-year study of those impacts. The study, Impacts of Off-Road Vehicles on Cape Cod National Seashore, was completed by the University of Massachusetts in 1979. Based upon a review of these research findings, legal mandates, local laws and regulations, and after extensive public review and comment the NPS developed an ORV Management Plan which eventually became effective on April 15, 1981.

For the convenience of the reader, the most significant provisions of the 1981 ORV Management Plan are outlined below: See figure (1).

1981 ORV Management Plan

1. Head of the Meadow Beach in Truro to Coast Guard Beach in Eastham, a distance of 16 miles, was open to ORV traffic year-round except for protected beaches which were closed to ORV traffic from June 15 through September 15.

2. The 1.5 mile stretch of beach from Head of the Meadow Beach north to High Head was open to ORV traffic year-round.

3. High Head to the opening of Hatches, Harbor, a distance of 8 miles, was open to ORV traffic year-round except for the Race Point protected beach which was closed from June 15 through September 15.

4. The emergency dune route between Race Point Ranger Station and High Head was open to ORV traffic ONLY when tern nesting closures or high tides prevented continuous travel on the beach.

5. North of Head of the Meadow Beach, ORV traffic was restricted to a corridor defined as extending lateally from the berm crest to the spring high tide drift line; south of Head of the Meadow Beach, ORV traffic was confined to a corridor defined as extending laterally from the berm crest to the base of the bluffs or the toe of the dunes.

On April 15, 1981, the Conservation Law Foundation of New England (CLF) and other organizations filed suit against the Department of the Interior (Department) and the NPS to terminate all ORV use at the Seashore. On May 25, 1984, the U.S. District Court for the District of Massachusetts ruled that the 1981 ORV Management Plan had appropriately established zones for ORV use in accordance with the University of Massachusetts study so as not to "adversely affect" the Seashore's ecology. The Court then remanded issues of appropriateness of ORV use, fair allocation of space, and visitor conflict to the agency for further consideration. On August 1, 1985, the Department promulgated a rulemaking (50 FR 31177) that implemented an amended ORV Management Plan. This amended plan and its regulations, which went into effect on September 3, 1985, were developed by the NPS and were based on a number of factors and considerations, including: legislative mandates, existing local laws and

regulations, the results of a 1985 beach user survey conducted by the City University of New York, over 4 years of experience under the provisions of the 1981 ORV Management Plan, geographical considerations, visitor use statistics, scenic and aesthetic impacts, and management feasibility. Since then, the NPS has managed ORV use at the Seashore under the provisions of the 1985 ORV Management Plan and regulations codified at 36 CFR 7.67(a).

For the convenience of the reader, the most significant provisions of the 1985 ORV Management Plan, which is the existing plan, are outlined below: See figure (2).

1985 ORV Management Plan (existing plan)

1. Head of the Meadow Beach in Truro to Coast Guard Beach in Eastham is closed to ORV traffic year-round.
2. The 1.5 mile stretch of beach from Head of the Meadow Beach north to High Head is closed to ORV traffic year-round.
3. High Head to the opening of Hatches Harbor is open to ORV traffic from April 15 through November 15 except when tides, beach configuration, or nesting birds make the route impassable.
4. The emergency dune route is closed to ORV traffic.
5. A limited access ORV pass is available during the period from November 16 through April 14 for beach access between High Head and Hatches Harbor under certain conditions.
6. ORV traffic is confined to a corridor extending laterally from a point 10 feet seaward of the spring high tide drift line to the berm crest.

The 1985 ORV Management Plan closed 17.5 miles of beach from High Head in Truro to Coast Guard Beach in Eastham. This area had been open to ORV traffic during all but the summer months under the 1981 plan. The Service maintains that this area had limited ORV use prior to 1985, and the closure under the current management plan recognized the need to avoid unnecessary user conflicts. In this section, there are 12 Seashore and town beaches and parking areas which provide pedestrian access to fishing and other uses throughout the year.

The section of beach which is open to ORV use from Hatches Harbor around Race Point to High Head, a distance of 8 miles, provides beach access to prime fishing grounds and, due to limited access points, minimizes pedestrian and other user conflicts. Certain special uses (winter access to shellfishing beds, maintenance of dune cottages, etc.) are accommodated through the use of Limited Access Passes. Dune cottage residents have access to their individual cottages at any time that the route is passable.

Vehicle operators, other than cottage owners, who use the designated ORV routes must obtain an annual ORV permit. (2394 ORV permits were issued in 1987. 2529 ORV permits were issued between January 1 and October 31, 1988, which represents the latest figures for 1988 at the time of this notice.) The actual number of vehicles on the beach on a given day varies with season, weather, fishing conditions, and other factors. A daily maximum of approximately 250 off-road vehicles used Seashore beaches during the busiest days in 1988.

Total annual visitation to Cape Cod National Seashore during the 1988 calendar year is estimated to be 5.2 million visitors.

In March 1986, in response to controversy over the use of ORV's at the Seashore, the Assistant Secretary of the Interior for Fish and Wildlife and Parks assembled a study team to review the ORV issue. The study team's report recommended several changes to the 1985 ORV Management Plan including re-opening the beach year-round from Hatches Harbor to Coast Guard Beach in Eastham.

On June 28, 1988, the U.S. District Court issued its decision concerning the 1985 ORV Management Plan and its implementing regulations. The Court held among other things that, under the provisions of the 1985 ORV Management Plan and regulations:

1. ORV use at the Seashore is not inappropriate;
2. User conflicts within the ORV zone are minimized and that the Government has properly exercised its discretion in accommodating a variety of recreational uses within the ORV corridor with minimum conflict;
3. The Government has properly accorded other recreational users adequate use of the Seashore;
4. The Government properly surveyed the sentiments of Seashore users; and
5. ORV use does not adversely affect the Seashore's values as managed.

The Court also reaffirmed its 1984 decision that the Seashore's ecology was adequately protected from the impacts of ORV use under the 1981 Plan.

As a result of a review of the administrative record supporting the 1981 and 1985 ORV Management Plans and new information, including the final decision of the district court, the report of the 1986 Study Team, and the 1986 and 1988 recommendations of the Cape Cod Advisory Commission, the NPS proposes to modify the 1985 ORV Management Plan as follows:

The 6.75 mile section of beach from High Head in Truro south to Ballston Beach in Truro will be open, during night-time hours only, to ORV traffic during the period from April 15 through May 31 and from September 15 through November 15.

This section of beach is closed year-round under the existing 1985 ORV Management Plan. This revision will provide additional ORV use and access for fishing. Restricting the ORV use to night-time hours and to the Spring and Fall calendar periods will help minimize pedestrian and other user conflicts. The 6.75 miles includes one protected Seashore beach and three town beaches. Much of the beach in this area is bounded by high bluffs and large dunes.

Generally, a greater degree of caution and awareness of tide information will be needed by ORV users on the High Head to Ballston section of beach.

The Seashore will modify its ORV permit orientation program to emphasize the hazards associated with the tides and beach configuration on this 6.75 mile section. Ranger patrols will be utilized to monitor and enforce the route designations, time and travel restrictions, and to assist in preventing violations of the ORV regulations. Patrols will also be scheduled during the summer months to monitor the beach conditions, assist visitors, and enforce the June 1 through September 14 closure. Existing regulations will be utilized to close the beach to ORV traffic whenever tides, nesting birds, or the beach configuration prevents travel in the designated corridor.

For the convenience of the reader, the most significant provisions of the proposed revision to the 1985 ORV Management Plan are outlined below: See figure (3).

Proposed Revision to ORV Management Plan

1. Ballston Beach in Truro to Coast Guard Beach in Eastham, a 10.75 mile section of beach, is closed to ORV traffic year-round.
2. Ballston Beach in Truro to High Head in Truro, a 6.75 mile section of beach, is open, during night-time hours only, to ORV traffic from April 15 through May 31 and from September 15 through November 15, except when tides, beach configuration, or nesting birds make the route impassable.
3. High Head to the opening of Hatches Harbor is open to ORV traffic from April 15 through November 15 except when tides, beach configuration,

or nesting birds make the route impassable.

4. The emergency dune route is closed to ORV traffic.

5. A limited access ORV pass is available during the period from November 16 through April 14 for beach access between High Head and Hatches Harbor under certain conditions.

6. ORV traffic is confined to a corridor extending from a point 10 feet seaward of the Spring high tide drift line to the berm crest, except in areas where a drift line is not distinguishable due to cliffs or existing dunes, in which case travel will be restricted to the beach below the cliffs or toe of the dune.

Restrictions imposed under the Seashore's ORV Management Plan are applicable only on lands administered, by the NPS; ORV access to privately owned land is subject to permission of the landowner. In addition, because the United States exercises concurrent legislative jurisdiction with the Commonwealth of Massachusetts over lands and water within the Seashore boundary, ORV restrictions imposed by State and local governments also apply to land administered by the NPS. For instance, on October 18, 1988, the town of Wellfleet enacted a by-law that prohibits vehicle travel below the high tide line year-round on beaches within that town. This restriction now applies to approximately 8 miles of beaches administered by the NPS. (This by-law does not conflict with the existing rules or proposed revisions). The effects of this by-law and other local government restrictions should be considered by persons submitting suggestions in response to this notice, but should also be considered as being beyond the control of the Department or the NPS to change.

Public Participation

The National Park Service (NPS) welcomes and encourages comment on the management of ORV's at Cape Cod National Seashore. Two basic issues are involved: Regulation to protect the resources and regulation to minimize conflicts between visitors and ORV users.

The Court found that the Plan and Amended Plan, as implemented and enforced, effectively protect the ecology of the Seashore from the impact of ORVs.

The 1985 ORV Plan emphasized the minimization or ORV/non-ORV user conflict. The visitor conflict study revealed that under the 1981 ORV Plan "* * * * ORV uses wer extremely unlikely to be mentioned as a reason why visitors' enjoyment of the Seashore may have decreased," and that 86 percent of the non-ORV using visitors did not believe additional ORV restrictions beyond those incorporated in the 1981 plan were needed.

Because the scope and nature of any regulatory scheme reflects a "balancing" of diverse visitor uses and expectations, we are encouraging comments that focus on whether this proposal would increase user conflicts in a manner that would be inconsistent with the use and enjoyment of the Cape Code National Seashore.

In addition we would like to comment on specific aspects of this proposal. Should the amount of beach proposed to be reopened to ORV's be enlarged or reduced? How should any changes be made? Should the restriction on use to night-time hours only be relaxed or made more stringent? How should any changes be made? Should proposed periods of reopening be expanded or contracted? How should any changes be made?

Drafting Information.

The following individual wrote this regulation: Tony Bonanno, Chief Ranger, Cape Cod National Seashore, South Wellfleet, MA 02663.

Paperwork Reduction Act

The information collection requirements contained in § 7.67(a)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the Superintendent to issue off-road vehicle permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Public reporting burden for this information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Russell K. Olsen, Administrative Services Division, National Park Service, Washington, DC 20013–7127; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This conclusion is based on the finding that no costs should result for any small entity.

As required by the National Environmental Policy Act (42 U.S.C. 4332, *et seq.*), the National Park Service prepared an Analysis of Management Alternatives including an environmental assessment and a Record of Decision on Off-Road Vehicle Use in 1981 and an amended Record of Decision in March 1985 on the substantive portions of the 1985 rules. Copies of these documents are available for review at the address noted at the beginning of the rule.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.67, by re-designating paragraphs (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) to (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) respectively, and by adding a new paragraph (a)(1)(ii) and revising paragraphs (a)(1)(v) and (a)(2)(i)(A) to read as follows:

§ 7.67 Off-road operation of motor vehicles.

(a)(1) * * *

(i) * * *

(ii) From April 15 through May 31 and from September 15 through November 15, during the hours from one half hour after sunset to one half hour before sunrise, local time, on the outer reach between High Head and Ballston Beach in Truro, including the designated beach across routes at High Head, Head of the Meadow Beach, Coast Guard Beach (Truro), and Ballston Beach.

(iii) * * *

(iv) * * *

(v) Except as described in paragraph (a)(1)(iii) of this section, from November 16 through April 14 oversand travel is restricted to uses and routes approved in writing or by permit by the Superintendent.

(2) * * *

(i)(A) On the beach, a vehicle operator shall drive in a corridor extending from a point 10 feet seaward of the Spring high tide drift line to the berm crest. An operator may drive below the berm crest only to pass a temporary cut in the beach but shall regain the crest immediately following the cut. In areas where the drift line is not distinguishable due to cliffs or existing dunes, travel will be restricted to the beach below the cliffs or toe of the dune. Delineator posts may mark the landward side of the corridor in critical areas.

* * * * *

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

Date: December 21, 1988.

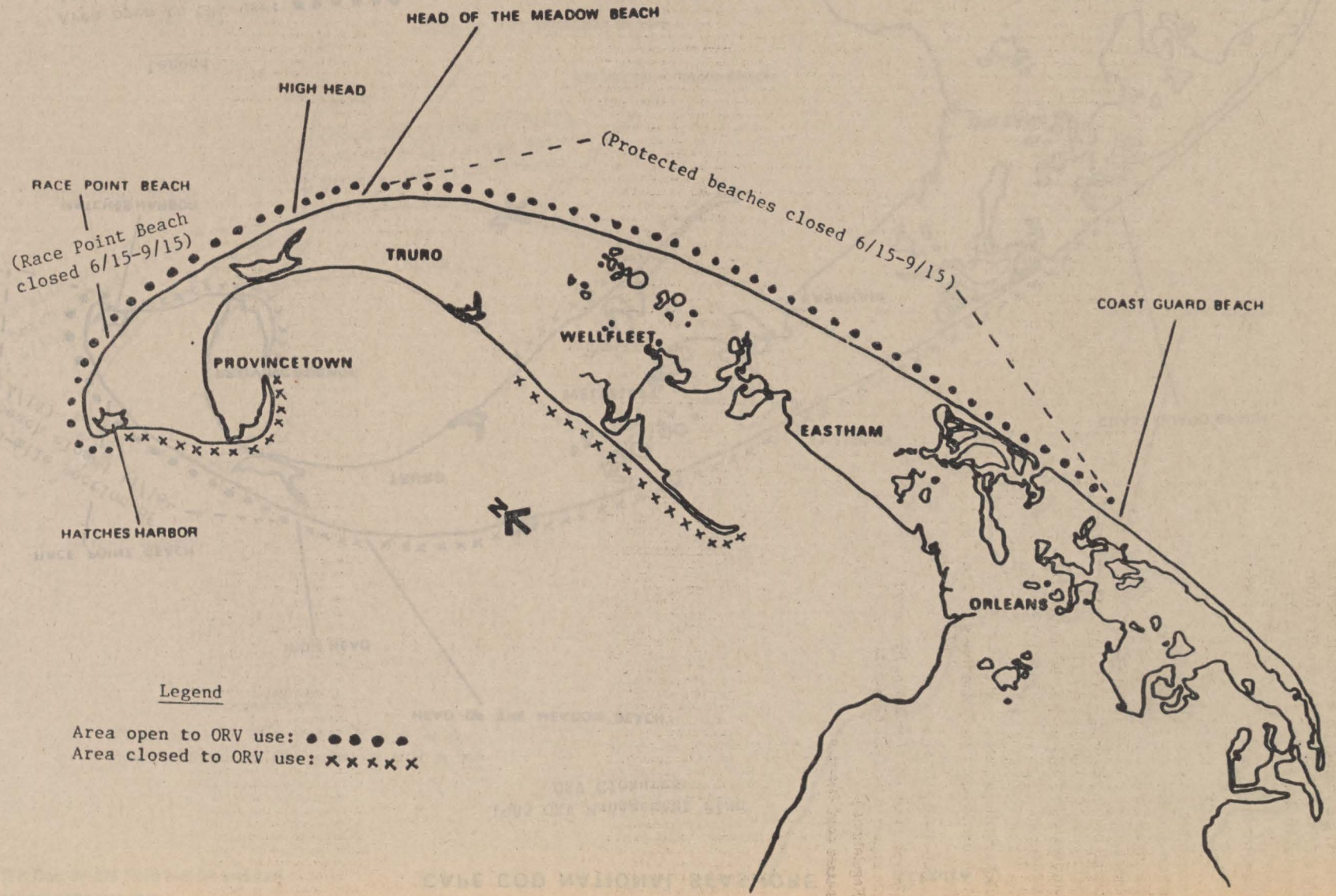
[Editorial Note.—The following figures will not appear in the Code of Federal Regulations.]

BILLING CODE 4310-70-M

CAPE COD NATIONAL SEASHORE

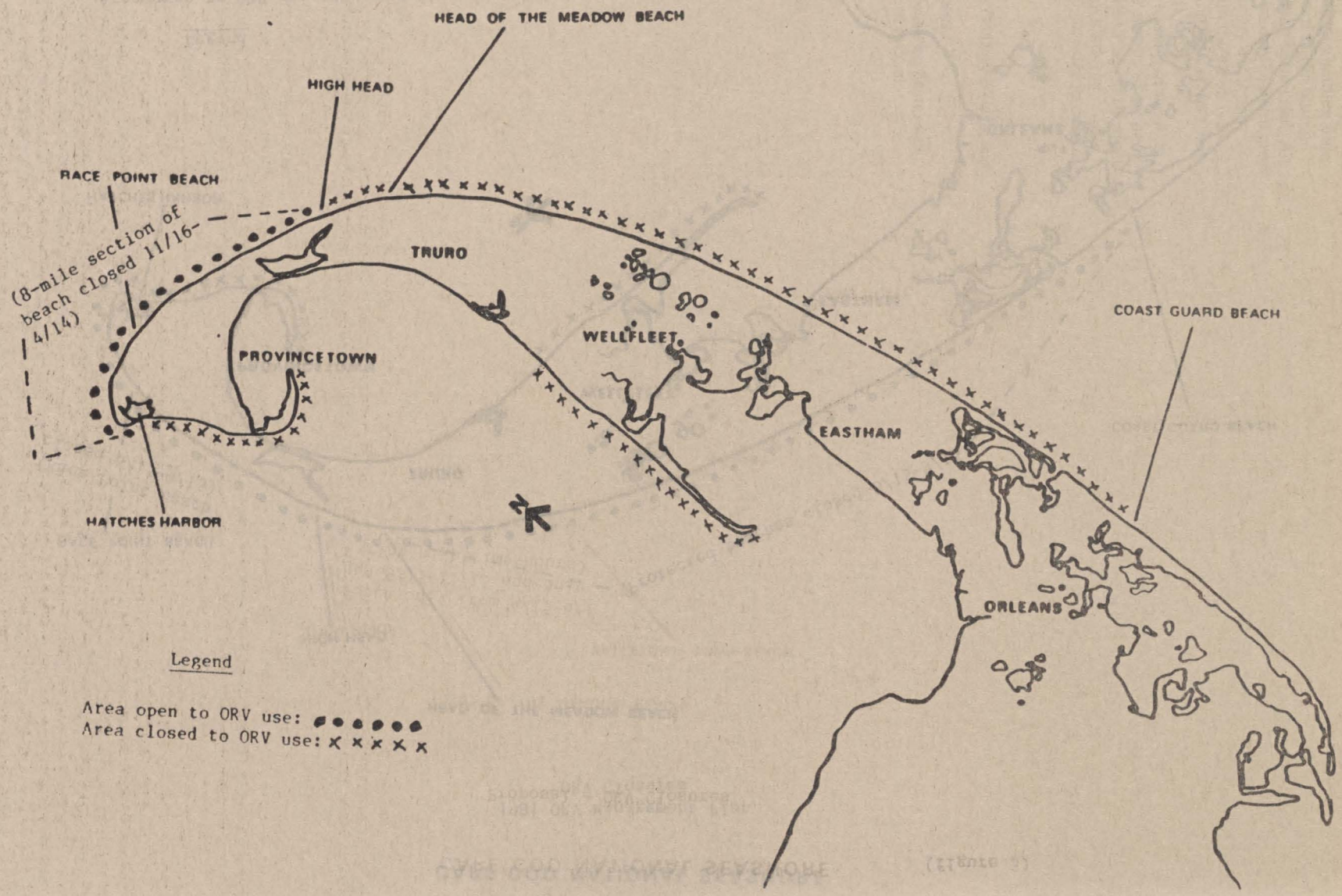
(figure 1)

1981 ORV Management Plan
ORV Closures



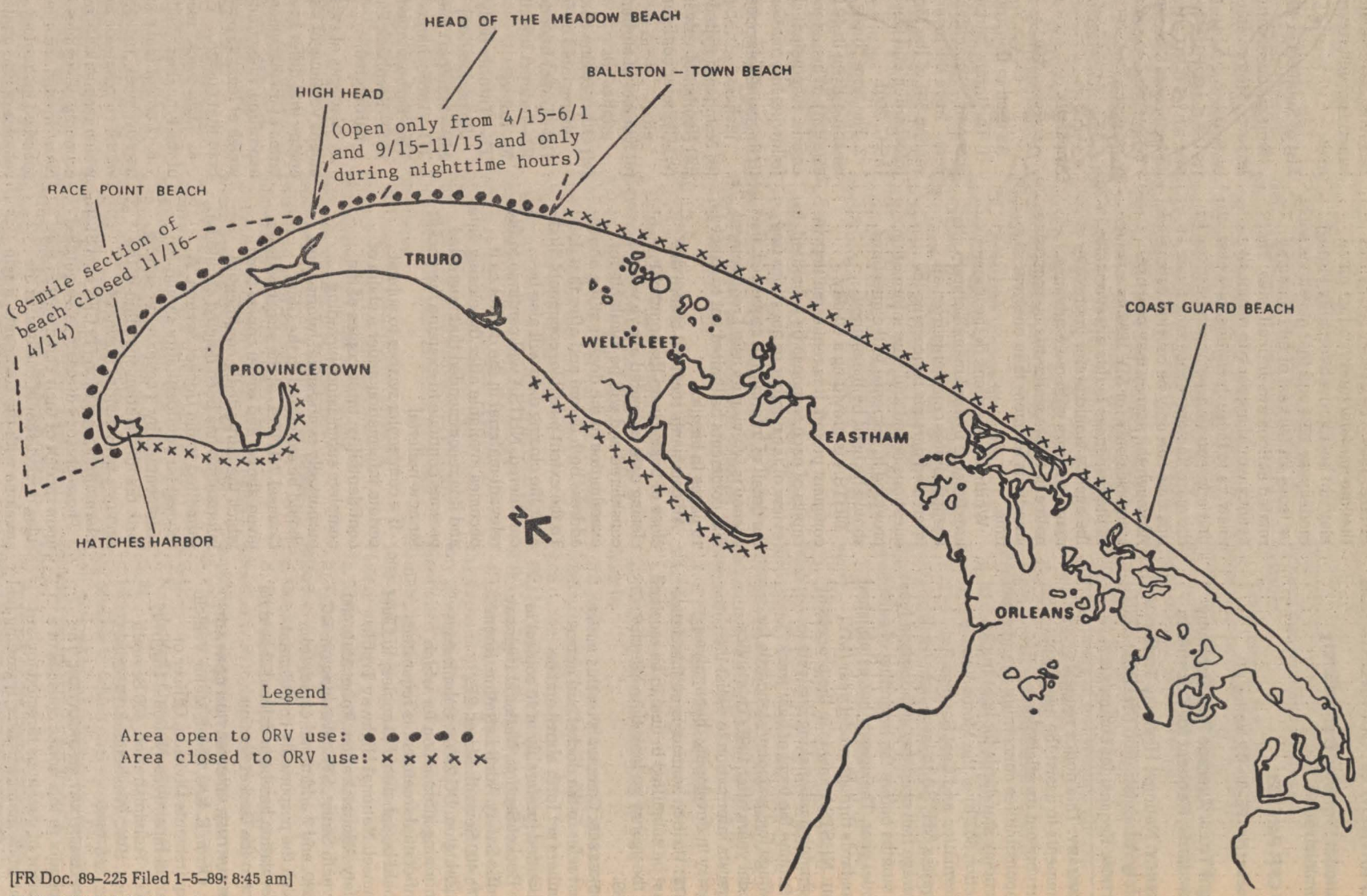
CAPE COD NATIONAL SEASHORE (figure 2)

1985 ORV Management Plan
ORV Closures



CAPE COD NATIONAL SEASHORE (figure 3)

Proposal - ORV Closures



[FR Doc. 89–225 Filed 1–5–89; 8:45 am]
BILLING CODE 4310–70–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-88-03; Notice 1]

Light Truck Average Fuel Economy Standards; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Dot.

ACTION: Request for comments.

SUMMARY: This notice requests comments to assist the agency in carrying out its rulemaking responsibilities concerning average fuel economy standards for light trucks. Section 502(b) of the Motor Vehicle Information and Cost Savings Act requires NHTSA to issue light truck average fuel economy standards at least 18 months before the beginning of each model year. The agency has established standards through model year (MY) 1991. NHSTSA now is in the process of beginning a rulemaking analysis to determine the level of light truck average fuel economy standards for model years after 1991. This notice requests information to assist the agency in developing that analysis.

DATE: Written comments on this notice must be submitted in time to be received by the agency no later than March 7, 1989.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SE., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron E. Kee, Chief, Motor Vehicle Requirements Division, Officer of Market Incentives, National Highway Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0846.

SUPPLEMENTARY INFORMATION: The appendix to this notice consists of a number of questions directed toward light truck manufacturers, regarding fuel economy data for model years 1990 through 1994. The agency recognizes that the manufacturer product plans may not be approved formally through model year 1994 and that questions such as those on the cost of fuel economy related actions are difficult ones. The agency would appreciate responsive answers to these questions, however, so that appropriate weight can be given to the many factors whose magnitude at this time can only be roughly estimated. Although the agency may propose standards only for MY 1992 as a result of the responses to this questionnaire, the agency would prefer to provide manufacturers with more advance notice of future standards by proposing standards for more than one year at a time.

While the questions in the appendix are directed toward manufacturers, the agency invites comments from all interested persons concerning the questions asked and how information provided in response to the questions should be used by the agency.

NHTSA is providing a 60-day comment period. It is requested that 10 copies of each response be submitted. In review of the number of questions and the detail of information requested, the agency is waiving its usual requirement that comments be limited not to exceed 15 pages in length.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with the comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

Authority: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 (FR 501.8)

Issued December 29, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

Appendix

I. Definitions

As used in this appendix:

1. The terms "automobile," "fuel economy," "manufacturer," and "model year," have the meaning given them in section 501 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001.

2. The term "basic engine" has the meaning given in 40 CFR 600.002-85(a)(21). When identifying a basic engine, respondent should provide the following information:

(i) Engine displacement (in cubic inches).
(ii) Number of cylinders or rotors.
(iii) Number of valves per cylinder.
(iv) Cylinder configuration (V, in-line, etc.).
(v) Number of carburetor barrels, if applicable.
(vi) Other engine characteristics, abbreviated as follows:
DD—Direct Injection Diesel
ID—Indirect Injection Diesel
R—Rotary
TB—Throttle Body Fuel Injection S.I. (Spark Ignition)
MP—Multiport Fuel Injection S.I.
TD—Turbocharged Diesel
TS—Turbocharged S.I.
FFS—Feedback Fuel System, carbureted

3. "Variants of existing engines" means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

4. "Light truck" means an automobile of the type described in 49 CFR 523.5.

5. "Percent fuel economy improvement" means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which feasibly could use the technology.

Projections of percent fuel economy improvement shoud be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 1989 model year light trucks in the equivalent class.

6. "Percent production implementation rate" means that percentage which corresponds to the maximum number of light trucks of a specified class which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

7. "Possession" means ownership, custody or control.

8. "Production percentage" means the percent of respondent's light trucks of a specified model projected to be manufactured in a specified model year.

9. "Project" or "Projection" refers to the best estimates made by respondent, whether or not based on less than certain information.

10. "Relating to" means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

11. "Respondent" means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

12. "Test weight" is used as defined in 40 CFR 86.082–2.

13. "Transmission class" is used as defined in 40 CFR 600.002–05(22)(a). When identifying a transmission class, respondent also must indicate whether the transmission is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears.

14. The term "van" is used as defined in 40 CFR 86.082–2.

15. The term "cargo-carrying volume," "gross vehicle weight rating" (GVWR), and "passenger-carrying volume" are used as defined in 49 CFR 523.2.

16. For the purposes of this appendix the term "utility vehicle" means a form of light truck, either two-wheel drive (4x2) or four-wheel drive (4x4), which as a wheelbase of 110 inches or less and is exemplified by a Jeep Wrangler or Cherokee, a Chevrolet Blazer, a Dodge Ramcharger, Ford Bronco, or a Toyota Land Cruiser.

17. "Redesign" means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

18. "Domestically manufactured" is used as defined in section 503(b)(2)(E) of the act.

19. For the purposes of this appendix, a "class" of light trucks means a group (e.g., domestically produced 4x2 light trucks) for which average fuel economy standards are set.

20. For the purposes of this appendix, a "model" of light truck is a line, such as the Chevrolet C–10 or Astro, Ford F150 or E100, Jeep Wrangler, etc., which exists within a class. "Model type" is used as defined in 40 CFR 600.002–85(a)(19).

21. "Truckline" means the name assigned by the Environmental Protection Agency to a different group of vehicles within a make or car division in accordance with that agency's 1989 model year truck, van (cargo vans and passenger vans are considered separate truck lines) and special vehicle criteria.

II. Assumptions

All assumptions concerning emission standards, noise and damageability regulations, safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications

1. Identify all light truck models currently offered for sale in MY 1989 whose production you project discontinuing before or during MY 1994 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 1989 light trucks which respondent projects ceasing to offer for sale in light trucks before or during MY 1994, inclusive, and identify the last model year in which each will be offered.

3. Does the respondent currently project offering for sale any new or redesigned light trucks, including vehicles smaller than those now produced during any model year 1990–1994? If so, provide the following information for each model (e.g., Chevrolet C–10, Ford F150). Model types which are essentially identical except for their nameplates (e.g., Dodge Caravan/Plymouth Voyager) may be combined into one item. See Table A for a sample format; 4x2 and 4x4 light trucks are different models.

a. Body types to be offered for sale (e.g., regular cab, super cab). Provide passenger-carrying volume, number of seating positions, and cargo-carrying volume.

b. Description of basic engines, including optional horsepower and torque ratings, if any; displacement; number and configuration of cylinders; type of carburetor or fuel injection system; and number of valves per cylinder.

c. Transmission type (manual, automatic, number of forward speeds, overdrive, etc., as applicable), including gear ratios and final drive, alternative ratios offered, and driveline configuration.

d. (i) The range of GVW ratings to be offered for each body type.

(ii) The range of test weights offered for each body type.

e. All wheelbases.

f. Estimated power absorption unit (PAU) setting, in hp.

g. External dimensions (total length, width, and height).

h. The range of projected EPA composite fuel economics for each body type in the initial model year of production.

i. Projected introduction date (model year).

j. Projected sales for each model year from the projected year of introduction through MY 1994, expressed both as an absolute number of units sold and as a percentage of all light trucks sold by respondent.

k. If other than domestically manufactured, so state.

l. Projections of:

(i) Existing models replaced by new models.

(ii) Reduced sales of respondent's existing models as a result of the sale of each of the new models.

(iii) New sales not captured from any of the respondent's existing models.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its light truck fleets in model years 1990–1994? If so, for each basic engine or variant indicate:

a. The projected year of introduction,

b. Type (e.g., spark ignition, direct injection diesel),

c. Displacement,

d. Type of induction system (e.g., fuel injection with turbocharger, naturally aspirated, 2-barrel carburetor),

e. Cylinder configuration (e.g., V–8, V–6, I–4),

f. Number of valves per cylinder (e.g., 2, 3, 4),

g. Horsepower and torque ratings,

h. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

5. For each of the model years 1990–1994, and for each light truck model projected to be manufactured by

respondent (if answers differ for the various models), provide the requested information for each of items "a" through "m" listed below:

(i) Description of the nature of the technological improvement;

(ii) The percent fuel economy improvement averaged over the model, if answers vary within the model;

(iii) The basis for your answer to 6(ii), (e.g., data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) The percent production implementation rate and the reasons limiting the implementation rate;

(v) A description of the 1989 baseline technologies and the 1989 implementation rate; and

(vi) The reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table B.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percent of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratio. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcane lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 1989 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power-steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling loses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., increased aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 1989 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improved lubricants in the differential and wheel bearings, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of spark ignition engines including: (a) Increased compression ratio; (b) leaner air-to-fuel ratio; (c) revised combustion chamber configuration; (d) fuel injection; (e) electronic fuel metering; (f) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (g) variable valve timing or valve lift; (h) multiple valves per cylinder; (i) friction reduction by means such as low tension piston rings and roller cam followers; and (j) other methods (specify).

k. Naturally aspirated diesel engines, with direct or indirect fuel injection.

l. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

m. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

6. For each model of respondent's light truck fleet projected to be manufactured in each of model years 1990–1994, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings are to be used for 4x4 light trucks and 4x4 light trucks.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers, and utility, i.e., the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts which provide reduced weight for approximately the same payload and cargo volume.

7. For each model year 1992, 1993, and 1994, list all projected light truck model types and provide the information specified in "a" through "k" below for each model type.

The information should be in tabular form, with a separate table for each model year. Domestic and non-domestic model types are to be listed separately. Each of the two groupings is to be subdivided into separate listings for models with 4x2 and 4x4 drive systems. Engines having the same displacement but belonging to different engine families are to be grouped separately.

The vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. For these groupings, the average test weights are to be placed in ascending order. List the categories of information in terms "a" through "k" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted harmonic average fuel economy and average test weight for imported and domestic light trucks for each truckline and for all of the respondent's light trucks.

a. Truckline, e.g., C–10, F–150, B–150. Model types which are essentially identical except for their nameplates (e.g., Chevrolet S–10/GMC S–15 and Dodge Caravan/Plymouth Voyager) may be combined into one line item.

b. Light truck vehicle type, e.g., compact pickup, cargo van, passenger van, utility, truck-based station wagon, and chassis cab. Other light truck designations, which are adequately defined, can be used if these are not suitable.

c. Basic engine: Include the engine characteristics used in Definition 2.

d. Transmission class (e.g., A3, A4, A40D, M5, CVT): Include the characteristics used in Definition 13.

e. Average ratio of engine speed to vehicle speed in top gear (N/V), rounded to one decimal place.

f. Average test weight.

g. Average PAU setting: Provide the value and show whether the value (or estimated value) is based on coastdown testing (T) or calculated from the vehicle frontal area (C). Round the PAU value to one decimal place.

h. Air conditioning: Y-air conditioning installations are projected to exceed 33 percent of the vehicles described in the line item; N-air conditioning installations are projected to be less than 33 percent of the vehicles described in the line item.

i. Average air conditioner refrigerant capacity for *all* vehicles in fleet, for purposes of estimating ultimate clorofluorocarbon emission capacity.

j. Composite fuel economy (sales weighted, harmonically averaged over

the specified vehicles, rounded to the nearest 0.1 mpg).

k. Projected sales for the vehicles described in each line item.

8. For each transmission identified in response to 7(d) above, provide a listing showing whether the transmission is manual or automatic, the gear ratios for the transmission, and the models which use the transmission.

9. Indicate any MY 1990–1994 light truck model types which have higher average test weights than comparable MY 1989 model types. Describe the reasons for any weight increases (i.e., increased option content, less use of premium materials) and provide supporting justification.

10. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 4, and 5, provide your best estimate of the following in terms of constant 1989 dollars.

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that will be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing the methodology used to determine the equivalent retail price increase.

(f) Total research and development costs associated with the new/redesigned model or improvement.

(g) Total fixed costs (other than those identified in (a) above) associated with each new/redesigned model or improvement, based on production volumes specified in (b) above.

11. Please provide respondent's actual and projected U.S. light truck sales, 4x2 and 4x4, 0–8,500 lbs. GVWR and 8501–10,000 lbs. GVWR for each model year from 1989 through 1994, inclusive. Please subdivide the data into the following vehicle categories:

i. Standard Pickup Heavy (e.g., C–20/30, F–250/350, D–250/350)
ii. Standard Pickup Light (e.g., C–10, F–150, D–100)
iii. Compact Pickup (e.g., S–10, Ranger)
iv. Standard Cargo Vans Heavy (e.g., G–30, E–250/350, B–350)
v. Standard Cargo Vans Light (e.g., G–10/20, E–150, B–150/250)
vi. Standard Passenger Vans Heavy (e.g., G–30, E–250/350, B–350)
vii. Standard Passenger Vans Light (e.g., G–10/20, E–120, E–150, B–150/250)
viii. Compact Cargo Vans (e.g., Astro, Aerostar, Mini Ram Van)
ix. Compact Passenger Vans (e.g., Astro, Aerostar, Voyager)
x. Standard Utilities (e.g., V–10 Blazer, Bronco, Ramcharger)
xi. Compact Utilities (e.g., S–10 Blazer, Bonco II, Wrangler)
xii. Other (e.g., Suburban, El Camino, Justy)

Provide separate tables for domestic and captive imports or vehicles with less than 75 percent domestic content. See Table C for a sample format.

12. Please provide (a) historical and (b) your estimates of projected *total industry* U.S. light (0–10,000 lbs. GVWR) truck sales for each model year from 1988 through 1994, inclusive. Please subdivide the data into 4x2 and 4x4 sales and into the vehicle categories listed in the sample format in Table D.

13. For domestic manufacturers only: In previous rulemakings, the agency has used manufacturers' estimates of future capital spending to estimate the financial impact of alternative fuel economy standards. To permit similar comparisons in this rulemaking, please provide an estimate of your capital spending in North America for each year from 1988 through 1994. In addition, please provide an estimate of your total corporate capital spending and depreciation and amortization for each year from 1988 through 1994.

14. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 1988 through 1994.

15. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's light truckline designations during model years 1988–1994.

TABLE A

[Model: LT–1B Driveline Configuration: Conventional 4x2: Front engine/rear drive]

	Pass. volume	No. seating pos.	Cargo vol.	e. Wheel base	f. power absor. Unit setting hp	g. External dimensions		
						L	W	H
a. Body Types:								
Regular Cab, Short Bed	XFt³	3	Yft³	115	8.0			
Regular Cab, Long Bed	XFt³	3	Zft³	133	8.5			
Extended Cab, Long Bed	X1ft³	4	Zft³	151	8.5			
Crew Cab, Long Bed	X2ft³	6	Zft³	170	9.0			

CID	Conf/No. Cyl.	Carb	Hp/rpm	Torque/rpm
b. Basic Engines:				
235 [1]	V6	2V	x/3600	Y/1800
310	V8	2V		
340 [2]	V8	4V		
340 [2]	V8	MP		

[1] Not available with crew cab.
[2] Available only with HD 4-speed manual transmission or automatic transmission.

Manual 3-speed [1]	Manual Overdrive [1]	Automatic	HD Manual 4-Speed
c. Transmission Types:			
1 3.00	1 3.00	1 2.50	1 6.50
2 1.75	2 1.75	2 1.50	2 3.60
3 1.00	3 1.00	3 1.00	3 1.80
R 3.15	4 .80	R 1.90	4 1.00
	R 3.15	TC 2.1	R 6.10
RAR 3.23/3.54/3.73	3.54/3.73	3.23/3.54	3.23/3.54/3.73

[1] Not available with 340 CID V8 engines.

	Body Type	Range of Test Weights
d. Range of GVWR:		
6,050 to 7,000	Reg. Cab, Short Bed	4,250–4,500
6,050 to 7,200	Reg. Cab, Long Bed	4,250–4,500
6,300 to 7,400	Extended Cab, Long Bed	4,500–5,000
6,300 to 7,400	Crew Cab, Long Bed	4,500–5,000

Body	Range of Composite Fuel Economy Ratings for Introduction Year
h. Fuel Economy Values:	
Reg. Cab, Short Bed	14.0–16.0
Reg. Cab, Long Bed	13.8–15.8
Extended Cab, Long Bed	13.5–15.4
Crew Cab, Long Bed	13.0–15.1
i. and j. Projected Introduction and Sales Through MY 1984:	
1992 (I) [2]	38,000
1993 [3]	78,000
1994	110,000
k. To be completed only if domestically manufactured.	
l. (i) Redesigned; replaced LT–1A.	
(ii) The extended cab introduced in MY 1993 is expected to capture 15,000 passenger car-station wagon sales.	
(iii) The extended cab in (ii), above, is expected to capture a like amount of sales from, competitors in each model year.	

[2] Mid-year introduction.
[3] Extended cab introduced.

TABLE B.—TECHNOLOGICAL IMPROVEMENTS

Technological Improvement	Percent Fuel Economy Improvement	Percent production penetration					
		1989	1990	1991	1992	1993	1994
5 (a) Improved Auto Transmissions:							
LT–1	10.0	0	0	0	14	15	15
LT–2	8.0	0	0	0	14	15	15
LT–3	7.5	0	0	0	8	10	10
LT–1	10.0	0	0	0	20	20	20
LT–2	9.0	0	0	0	20	20	20
LT–3	7.5	0	0	0	10	12	12
U–1	10.0	0	0	0	14	15	15
5 (b) Improved Manual Transmissions:							
LT–1	4.0	0	0	0	35	35	35
LV–1	4.0	0	0	0	30	30	30
LV–2	4.0	0	0	0	30	30	30
U–1	4.0	0	0	0	35	35	35
5 (c) Overdrive Transmissions:							
LT–1	6.0	0	0	0	6	8	8
LV–1	6.0	0	0	0	5	6	6
LV–2	6.0	0	0	0	5	6	6
U–1	6.0	0	0	0	8	10	10

TABLE C.—AJAX 4X2 DOMESTIC LIGHT TRUCK SALES

	Model Year						
	1988	1989	1990	1991	1992	1993	1994
0-8,500 lbs. GVWR	509,379						
Standard Pickup Heavy	43,500						
Standard Pickup Light	120,000						
Compact Pickup	60,000						
Standard Cargo Van Heavy	20,000						
Standard Passenger Van Heavy	29,310						
Standard Passenger Van Light	54,196						
Compact Cargo Van	38,900						
Compact Passenger Van	30,000						
Standard Utilities	53,800						
Compact Utilities	44,000						
Other	5,673						
8,501-10,000 lbs. GVWR	5,500						
Standard Pickup Heavy	4,000						
Standard Utilities	1,000						
Other	500						
Grand total	514,879						

TABLE D.—Total U.S. Truck Sales

	1988		1989		1990		1991		1992		1993		1994	
	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.
1. Light Trucks (4×2)														
a. Pickup:														
1. Compact														
2. Small Car Based														
3. Large Car Based														
4. Standard														
b. Passenger Vans (Bus):														
1. Compact														
2. Standard														
c. Cargo Vans:														
1. Compact Standard														
2. Standard														
d. Utilities:														
1. Compact														
2. Standard														
3. Car Based														
e. Truck Based Station Wagons														
f. Other														
2. Light Trucks (4×4) [Same breakout as 4×2]														
3. Total Light Trucks (4×2+4×4)														

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Rhus michauxii (Michaux's Sumac)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Rhus michauxii* (Michaux's sumac), a dioecious shrub limited to 16 populations in North Carolina and Georgia, as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Rhus michauxii* is endangered by suppression of fire, conversion of habitat for silviculture and agriculture, industrial and residential development, highway construction and improvements, hybridization with other species, and geographic isolation of small, single-sex populations. This proposal, if made final, would implement Federal protection provided by the Act for *Rhus michauxii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 7, 1989. Public hearing requests must be received by February 21, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock, at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Rhus michauxii, described by C. S. Sargent (1895) from material collected in North Carolina, is a rhizomatous shrub. It is sometimes called "false poison sumac" because of its superficial resemblance to *Rhus vernix*. The erect stems grow from 0.3 to 1 meter in height, and the entire plant is densely pubescent. The narrowly winged or wingless rachis supports 9 to 13 sessile,

oblong to oblong-lanceolate leaflets that are each 4 to 9 centimeters long, 2 to 5 centimeters wide, and acute to acuminate. The bases of the leaflets are rounded, and their edges are simply or doubly serrate. Flowering in this dioecious species occurs in June. The small flowers are borne in a terminal, erect, dense cluster, with each one being four- to five-parted and greenish-yellow to white. The fruit, which is a red, densely short-pubescent drupe, 5 to 6 millimeters broad, is borne on female plants form August to September (Radford *et al.* 1964, Cooper *et al.* 1977, Sargent 1895). *Rhus michauxii* differs from other similar species of the genus by its short stature, dense overall pubescence, and evenly serrate leaflets.

Rhus michauxii is a species endemic to the inner coastal plain and lower piedmont of North Carolina, South Carolina, and Georgia, where it is currently known form 15 locations in North Carolina and 1 location in Georgia. The species occurs in sandy or rocky open woods, perhaps in association with basic soils (Cooper *et al.* 1977), and appears to be dependent upon some form of disturbance to maintain the open quality of its habitat. Artificial disturbances, such as railroad and highway right-of-way maintenance, are maintaining some of the openings historically provided by naturally occurring periodic fires. Thirty populations of *Rhus michauxii* have been reported historically from 21 counties in North Carolina, South Carolina, and Georgia. Sixteen of these populations remain in existence in North Carolina and Georgia. The following is a summary of the most current information for this species.

Georgia: Four populations were reported historically in the State from the counties of Newton, Rabun, Columbia, and Elbert. Only the Elbert County population is known to remain, with just four plants surviving. This site is on land owned by the U.S. Army Corps of Engineers, leased to the Georgia Department of Natural Resources as part of the Broad River Wildlife Management Area (T. Patrick, Georgia Heritage Inventory, personal communication, 1988.) The Newton County population is believed to have been destroyed during the construction of a water tower. Causes for the disappearance of the populations in Rabun and Columbia Counties are not known.

South Carolina: One population was reported historically from Kershaw County. Although extensive searches have been conducted in that area and others of potentially suitable habitat, the species is believed to have been extirpated from the State.

North Carolina: Rhus michauxii was once known to occur at 25 sites in this State. The species has been extirpated at 10 of these localities, with the causes for extirpation being largely unknown. One population is believed to have been extirpated in each of the following counties: Orange, Wake, Wilson, Robeson, Moore, Lincoln, Franklin, Durham, Mecklenberg, and Hoke. The distribution of the 15 extant populations by county is as follows.

Three populations remain in Hoke County. One of these sites, with several hundred female plants, is privately owned; another, with 23 plants, is located on Ft. Bragg Military Reservation and is owned by the U.S. Department of Defense; and the third, a severely disturbed site where only four plants remain, is partially in private ownership and partially owned by The Nature Conservancy.

Six populations occur in Richmond County. One of these (consisting of 2 plants) is privately owned, and 4 (3 with less than 50 plants each and one with 137 plants) are located on land owned by the U.S. Department of Defense that is leased and managed by the North Carolina Wildlife Resources Commission as part of the Sandhills Gamelands. The sixth population, with only eight plants, is on Ft. Bragg Military Reservation, owned by the U.S. Department of Defense.

Two populations occur in Scotland County on the Sandhills Gamelands, which are managed by the North Carolina Wildlife Resources Commission and owned by the U.S. Department of Defense. Both of these populations are large, with 1 covering an area of 76 meters by 137 meters, but contain only female plants. The other consists of 300 to 400 male plants.

One population survives in each of the following counties: Franklin, Davie, Robeson, and Wake. The Franklin County population is privately owned and contains over 250 plants of both sexes. The Davie County population, also in private ownership, consists of about 30 plants covering a 0.9-meter square area. The Robeson County population, in private ownership, consists of several hundred male plants. The Wake County population, owned by the City of Raleigh, consists of 279 plants of both sexes.

Many of these populations are in vulnerable locations, such as highway rights-of-way or on the edges of plowed fields. Those which are not adjacent to some maintained opening or exposed to periodic disturbance are endangered by natural succession.

On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the Federal Register (45 FR 82480); *Rhus michauxii* was included in that notice as a category 1 species. Category 1 species are those for which the Service presently has sufficient information on hand to support the biological appropriateness of their being listed as endangered or threatened species. Subsequent revisions of the 1980 notice have maintained *Rhus michauxii* in category 1.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Rhus michauxii* Sargent (Michaux's sumac) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Rhus michauxii* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, 47 percent of the known populations have been extirpated, partly as a result of conversion of habitat for silvicultural and agricultural purposes and for industrial and residential development. Fire suppression appears to be a problem for this species and will be discussed in detail under Factor E below. Of the 14 populations that have been extirpated, 1 is known to have been eliminated by industrial development and one by conversion of the site to pine plantation. Causes for the extirpation of the others are unknown. Many of the remaining populations are on the edges of highway or railroad rights-of-way or cultivated fields. Fourteen of the 16 remaining populations are currently threatened by habitat alteration.

In addition to the major threats listed above, those populations on military land are potentially threatened by mechanized military training activities. Although this has not been a documented problem for this species thus far, some of the small sites occupied by the species could easily be destroyed by heavy, tracked vehicles such as tanks. Nonetheless, populations probably persist on military lands and

State gamelands where they have not survived on adjacent privately owned land because of the prescribed burning programs of the Defense Department and the North Carolina Wildlife Resources Commission, and periodic fires incidental to military training (J. Carter, North Carolina State University, personal communication, 1987; J. Moore, North Carolina Natural Heritage Program, personal communication, 1987). Activities associated with intensive timber management on publicly owned land, such as timber harvesting, road building, and conversion of habitat to pine plantation, if done in a manner not consistent with the protection of *Rhus michauxii* populations, could adversely affect the species, as has been the case on private lands in the past.

B. *Overutilization for commercial, recreational scientific, or educational purposes. Rhus michauxii* is not currently a significant component of the commercial trade in native plants. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Rhus michauxii* is afforded legal protection in North Carolina by North Carolina General Statutes, sections 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for monitoring and management of State-listed species and which prohibit taking of plants without written permission of landowners. *Rhus michauxii* is listed in North Carolina as endangered and of special concern (Sutter *et al.* 1983). The species is recognized in South Carolina as extirpated in the State and of national concern by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. The species is not listed by the State of Georgia where it was thought to have been extirpated until very recently. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as exclusion of fire. The Endangered Species Act would provide additional protection and encouragement of active management for *Rhus michauxii.*

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in area covered by the plants. Of the 16 remaining populations, 9 have less than 100 plants, with 3 of these containing less than a dozen plants each. The rhizomatous nature of the species indicates that there are many fewer individual plants in existence than stem counts would indicate. In addition, only two of the remaining populations contain both male and female plants. The dioecious nature of the species further increases the vulnerability of extremely small populations where plants of only one sex remain. Existing conditions at most of the occupied sites are indicative of low genetic variability within populations, which makes it more important to maintain as much habitat and as many of the remaining colonies, particularly those containing both sexes, as possible.

Another potential threat to this species, particularly in populations where only a few plants remain, is hybridization with sympatric species such as *Rhus galbra* and *Rhus copallina.* Hardin and Phillips (1985) documented the existence of an intermediate form between *Rhus galbra* and *Rhus michauxii* in at least two sites from which *Rhus michauxii* had been reported. Much remains unknown about the demographics and reproductive requirements of this species. Fire or some other suitable form of disturbance, such as mowing or careful clearing, is essential for maintaining the open habitat preferred by *Rhus michauxii.* Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by the shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop the *Rhus michauxii,* which is shade-intolerant. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 16 remaining populations, 11 are on roadsides or in the edges of artificially maintained clearings. Two others are in areas that have been exposed to periodic fire, another is in a natural opening on the rim of a Carolina bay (shallow, elliptical depression of unknown origin); the remaining two are in wooded sites and are declining in vigor (J. Moore, personal communication, 1988; T. Patrick, personal communication, 1988).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Rhus michauxii* as endangered. With almost half of the species' populations already having been eliminated and only 16 remaining in existence (with most of these being very small in size and containing plants of only one sex), and based upon its dependence on some form of active management, it warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing most populations. As stated by Hardin and Phillips (1985), "*Rhus michauxii* is apparently on the verge of extinction * * *" Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Rhus michauxii* at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, *Rhus michauxii* is vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal, reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions would make *Rhus michauxii* more vulnerable and would increase enforcement problems for the U.S. Department of Defense. The populations on private lands would be vulnerable to collection and vandalism. Increased visits to population locations stimulated by critical habitat designation could adversely affect the species. The Federal and State agencies and landowners involved in protecting and managing the habitat of the species have been informed of the plant's locations and the importance of protection.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species

Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collection 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 any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Department of Defense has jurisdiction over portions of this species' habitat. Federal activities that could impact *Rhus michauxii* and its habitat in the future include, but are not limited to, the following: Silvicultural activities, including timber harvesting and conversion of sites to pine plantations by means of mechanical site preparation; mechanized military training operations; recreational development; power line construction and certain types of maintenance/improvements; highway construction and certain types of maintenance/improvements; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Rhus michauxii* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Rhus michauxii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export the species, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction, on Federal lands and their removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is expected that few trade permits would ever be sought or issued, since *Rhus michauxii* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Rhus michauxii*;

(2) The location of any additional populations of *Rhus michauxii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Rhus michauxii*.

Final promulgation of any regulation on *Rhus michauxii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office (see "**ADDRESSES**" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cooper, J., S. Robinson, and J. Funderburg. 1977. Endangered and threatened plants and animals of North Carolina; proceedings of the symposium on endangered and threatened biota of North Carolina. North Carolina State Museum of Natural History, Raleigh, North Carolina. P. 61.

Hardin, J., and L. Phillips. 1985. Hybridization in eastern North American Rhus (Anacardiaceae). Association of Southeastern Biologists Bulletin 32(3):99-106.

Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. University of North Carolina Press, Chapel Hill. p. 678.

Sargent, C.S. 1895. New or little-known plants; *Rhus michauxii*. Garden and Forest 398:404-405.

Sutter, R., L. Mansberg, and J. Moore. 1983. Endangered, threatened, and rare plant species of North Carolina: a revised list. Association of Southeastern Biologists Bulletin 30:153-163.

Author

The primary author of this proposed rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Anacardiaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Anacardiaceae—Cashew family:						
*	*	*	*	*	*	*
Rhus michauxii	Michaux's sumac	U.S.A. (NC, SC, GA)	E		NA	NA
*	*	*	*	*	*	*

Dated: December 21, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–259 Filed 1–5–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 30, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118. Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

REVISION

• Rural Electrification Administration
Electric Loan Application Packet
REA Forms 7, 7a, 325a-k, 341, 345, 346, 740c, 740g
On Occasion
Small Businesses or organizations; 934 responses; 137,662 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382-1900

EXTENSION

• Food and Nutrition Service
Distribution of Donated Food to Family Units
FNS-152
Monthly
State or Local Governments; 1,260 responses; 2,520 hours; not applicable under 3504(h)
Bessie Bradford, (703) 756-3660
• Agricultural Marketing Service
Apricots Grown in Designated Counties in Washington—Marketing Order 922
None
On Occasion; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 123 responses; 17 hours; not applicable under 3504(h)
Virginia M. Olson, (202) 475-3930
• Agricultural Marketing Service
Peaches Grown in Designated Counties in Washington, Marketing Order 921
None
On Occasion
Farms; Businesses or other for-profit; Small Businesses or organizations; 334 responses; 54 hours; not applicable under 3504(h)
Virginia M. Olsen, (202) 475-3930
• Animal Plant Health Inspection Service
National Poultry Improvement Plan (NPIP)
VS Forms 9-2, 9-3, 9-4, 9-5, 9-6, 9-7, 10-3
Recordkeeping; On Occasion; Annually
State or local governments; Businesses or other for-profit; Small businesses or organizations; 27,000 responses; 3,276 hours; not applicable under 3504(h)
Irvin L. Peterson, (301) 436-5140.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89-200 Filed 1-5-89; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 88-145]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Low Dosage Gamma Radiation of Papayas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that we have prepared a finding of no significant impact regarding the potential effects on the human environment of disinsection of papayas through gamma irradiation. In this issue of the **Federal Register**, we are publishing a final rule that authorizes irradiation as a quarantine treatment for papayas intended for movement from Hawaii to the rest of the United States and its territories. In that final rule, we require that if irradiation treatment for papayas is used, the absorbed dosage must be at least 15 kilorads (krads). In assessing the potential environmental impact of the irradiation of papayas, we reviewed an environmental assessment, finding of no significant impact, and final rule concerning irradiation in the production, processing, and handling of food, that were prepared by the Food and Drug Administration with regard to gamma irradiation treatment not exceeding 100 kilorads for fresh foods. Our review indicates that the irradiation of papayas at levels of 100 kilorads will not have any significant impact on the quality of the human environment. Based on this finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the APHIS finding of no significant impact, and of the Food and Drug Administration environmental assessment and final rule, are available for public inspection at APHIS, USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Environmental Specialist, BBEP, APHIS, USDA, Room 403, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301)

436–7602. For copies of the APHIS finding of no significant impact, or the Food and Drug Administration environmental assessment or final rule, call Michael T. Werner at this same phone number or write him at this same address.

SUPPLEMENTARY INFORMATION:

Background

We have prepared a finding of no significant impact regarding the potential effects on the human environment of carrying out the disinsection of papayas through gamma irradiation. In this issue of the **Federal Register**, we are publishing a final rule, titled "Use of Irradiation as a Quarantine Treatment for Fresh Fruits of Papaya from Hawaii," Docket No. 87–040, that authorizes irradiation as a quarantine treatment for papayas intended for movement from Hawaii to the rest of the United States and its territories. The minimum required absorbed dosage of radiation for this treatment is 15 kilorads (krads). We have determined that this minimum dosage will prevent introduction of the oriental fruit fly, the Mediterranean fruit fly, and the melon fly into the continental United States and into uninfested off-shore areas of the United States.

In evaluating the potential environmental impact of this irradiation, we have reviewed documents prepared by the Food and Drug Administration (FDA) regarding the treatment of food products by irradiation. The FDA has prepared an environmental assessment (EA), finding of no significant impact (FONSI), and final rule (51 FR 13376, Docket No. 81N–0004) concerning irradiation in the production, processing, and handling of food. The FDA regulations permit use of irradiation at doses not to exceed 1 kGY (100 krad) to inhibit the growth and maturation of fresh foods and to disinfest food of arthropod pests, and permit use of irradiation at doses not to exceed 30 kGY (3,000 krad) to disinfect dry or dehydrated aromatic vegetable substances (spices and herbs) of microorganisms. They additionally require that irradiated foods be labeled at both the wholesale and retail level to show that they have been treated, and require that irradiation treatment records be maintained and be available for FDA inspection. We have reviewed these FDA documents to determine their applicability to gamma irradiation treatment for papaya, as allowed by our final rule, published in this issue of the **Federal Register**. For the purpose of the treatment of papayas, we have determined that potential environmental effects have been adequately considered by the FDA, and we concur with the conclusions of that agency's EA, FONSI, and final rule. We have documented this concurrence in our FONSI.

The FDA documents, and the FONSI that we issued based on our review of those documents, provide the public with analysis of environmental effects that may be associated with the irradiation of papayas at levels not exceeding 100 krad.

The following is a summary of the facts supporting our FONSI:

1. No adverse environmental effects are anticipated at food processing facilities using a radioactive source to sterilize food. Similarly, no adverse environmental effects are anticipated from the transportation of radioactive sources for the irradiation treatment.

2. Machine-generated radiation sources are subject to the Radiation Control for Health and Safety Act of 1968 and must comply with appropriate reporting requirements (21 CFR Part 1002) established by the Bureau of Radiological Health, FDA.

3. No cumulative effects of radiation are expected from eating irradiated fruit. The process would treat papayas only for disinsection, and would not expose humans to gamma radiation. The process does not make the fruit radioactive (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

4. The FDA has determined that chemical differences between irradiated foods processed at less than 100 kilorads and nonirradiated food are too small to affect the safety of the food (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

5. There is no evidence that insects or microorganisms surviving irradiation give rise to mutants with undue resistance to radiation or of abnormal virulence (21 CFR Part 179, 51 FR 13376, Docket No. 81N–004).

6. The FDA has determined that concerns over potential adverse human health effects (abnormally high rates of testicular tumors, kidney disease, death in offspring, lessened life spans, and abnormal increase in white blood cells) were not substantiated (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

7. The FDA has determined that there was no evidence to conclude that food irradiated and stored under normal handling practices would show increased production of aflatoxin (a toxic fungal metabolite implicated in the causation of liver cell carcinomas, produced by some strains of *Aspergillus flavus* and *Aspergillus parasiticus* in stored products) (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

8. To the extent that irradiation replaces fumigation by toxic chemicals (ethylene trioxide and ethylene bromohydrin), there is a reduction in the amount of toxic residues of these substances in the environment. (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

9. No reduction in vitamin, mineral, nutritional content, or quality of fruit is expected. A delayed senescence (aging) of the papayas may be expected.

Based on the foregoing, we have determined that the irradiation of papayas at levels not exceeding 100 krad will have no significant impact on the human environment.

The FDA environmental assessment, our review of that document and the FDA final rule, and our finding of no significant impact have been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council of Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done in Washington, DC, this 3rd day of January 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–266 Filed 1–5–89; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 88–205]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public that one application for a permit to release a genetically engineered organism into the environment is being reviewed by the

Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5874.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following application for a permit to release a genetically engineered organism into the environment, which is being reviewed by the Agency:

Accession No.	Date Received	Organism	Field Test Location
88-333-02	11-28-88	Genetically engineered insect-resistant tobacco.	North Carolina.

Done at Washington, DC, this 3rd day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-265 Filed 1-5-89; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Whitewater Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Whitewater Creek Watershed, Pike and Coffee Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, telephone (205) 821–8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing excessive erosion (20 tons per acre annually) on sloping cropland and reducing land voiding and depreciation. The planned works of improvement include land use conversation on 160 acres of marginal cropland, accelerated conservation land treatment on 8,070 acres of cropland, and installation of 14 grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Ernest V. Todd,

State Conservationist.

Dated: December 29, 1988.

[FR Doc. 89-207 Filed 1-5-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Monterey Bay, CA As An Active Candidate for National Marine Sanctuary Designation; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Intent To Hold Public Scoping Meetings on the Proposal To Designate Monterey Bay as a National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: By direction of Congress (Pub. L. 100–627, section 205), NOAA is naming Monterey Bay, off the Coast of California, an Active Candidate for designation as a National Marine Sanctuary and will proceed with the subsequent steps in the evaluation process. The study area under consideration for Sanctuary designation includes the coastal waters between Pigeon Point in San Mateo County and Point Sur in Monterey County and extending from the mean high tide line from these sites seaward, 14.5 nautical miles on a southwesterly heading of 240°.

Selection of a site as an Active Candidate formally begins the National Environmental Policy Act (NEPA) process; NOAA will prepare an environmental impact statement and management plan to examine the management and regulatory alternatives associated with Sanctuary designation. To initiate this process NOAA will hold scoping meetings in the Monterey Bay area of California to solicit information and comments from individuals, organizations and government agencies on the range and significance of issues related to Sanctuary designation and management.

A scoping meeting will be held on January 25, 1989 from 6:30 to 10:00 p.m. in the Monterey Conference Center, 1 Portola Drive, Monterey, CA 93940. A second scoping meeting will be held on January 26, 1989 from 6:30 to 10:00 p.m. in the Chambers of the Santa Cruz County Board of Supervisors, Room 500, 701 Ocean Street, Santa Cruz, CA 95060–4069. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, or Franklin

Christhilf, Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Suite 714, Washington, DC 20235, (202/673–5126).

SUPPLEMENTARY INFORMATION:

Selection Procedures

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate ocean waters as National Marine Sanctuaries to protect their distinctive conservation, recreational ecological, historical, research, educational or esthetic qualities. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Marine and Estuarine Management Division (MEMD). Selection of a site as an Active Candidate formally triggers the National Environmental Policy Act (NEPA) environmental impact analysis process.

On November 7, 1988, Pub. L. 100–627, the reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) ("the Act"), was signed into law. Section 205 of Pub. L. 100–627 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary no later than December 31, 1989. This directive by Congress automatically advances Monterey Bay to Active Candidate status.

Subsequent steps include a public hearing, preparation of a final environmental impact statement and management plan and a recommendation of approval to the Secretary of Commerce. Opportunities for comment exist throughout this process and will be announced in the **Federal Register**, the local media, and other appropriate channels.

Section 303 of the Act (16 U.S.C. 1433) and regulations for the National Marine Sanctuary Program (at 15 CFR 922.33) establish procedures for the evaluation of the suitability of Active Candidates as National Marine Sanctuaries. In developing the Sanctuary proposal, NOAA will determine to what extent designation will fulfill the purposes and policies of section 303(a) of the Act; and whether:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education;

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management. Further, based on section 303(b) of the Act (16 U.S.C. 1433), NOAA will consider:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biographic representation of the site;

(2) The area's historical, cultural, archeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in the consideration listed above;

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from Sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and non-living resources development;

(9) The socioeconomic effects of Sanctuary designation; and

(10) The fiscal capability of NOAA to manage the area as a National Marine Sanctuary.

In preparing the environmental impact statement and management plan (EIS/MP) to examine the management and regulatory alternatives associated with Sanctuary designation, NOAA will solicit comments from interested persons, groups and organizations, heads of interested Federal agencies, and responsible officials of State and local governments. This will be done during scoping meetings to be held in the Monterey Bay area, prior to preparation of the EIS/MP, and during public hearings to receive comments on the draft EIS/MP.

Past History

The State of California nominated the Monterey Bay area in 1977, along with nine other marine areas offshore for consideration as National Marine Sanctuaries. In response to these nominations, NOAA selected three sites for further consideration: Channel Islands, Point Reyes-Farallon Islands, and the Monterey Bay area. In December 1978, NOAA released an Issue Paper on these three sites, presenting several boundary and regulatory options for each proposal. Public hearings on the Issue Paper were held and, based on the responses, NOAA declared all three sites as Active Candidates on August 10, 1979.

This process led to the designation of the Channel Islands National Marine Sanctuary on September 21, 1980, and the Point Reyes-Farallons Islands National Marine Sanctuary (later renamed Gulf of the Farallones National Marine Sanctuary) on January 16, 1981. In 1980, NOAA determined that work on the proposed Monterey Bay Sanctuary would be delayed due to the complex analyses and corresponding staff time required for the other two California sites.

On December 14, 1983, NOAA removed Monterey Bay from the list of active candidates for three reasons: (1) The existence of two other National Marine Sanctuaries in California (Channel Islands and Gulf of the Farallones) which protect similar marine resources and the Program's policy, established in 1980, to consider a diverse array of sites and resources; (2) the proposed area's relatively large size and the surveillance and enforcement burdens this would impose on NOAA; and (3) the wealth of existing marine conservation programs already in place in the Monterey Bay area.

In 1988, when Congress reauthorized and amended Title III of the Act, it specified in section 205 of Pub. L. 100–627, that NOAA designate Monterey Bay as a National Marine Sanctuary by

December 31, 1989. This statutory requirement has therefore reinstated Monterey Bay as an Active Candidate for Sanctuary status.

Natural Resources

Monterey Bay is located within the Eastern Pacific Boreal Region which incorporates a vast area of the North Pacific, and more specifically, within the Oregonian biogeographical province encompassing the North American coast from Point Conception to the Canadian border. The Sanctuary study area includes the coastal waters between Pigeon Point, San Mateo County (37°11′N, 122°24′W) and Point Sur in Monterey County (36°18′N, 121°52′W) and extending from the mean high tide line from these sites seaward 14.5 nautical miles on a heading of 240°.

Oceanographic Characteristics

Typical of the Oregonian province, the Bay is strongly influenced by cool, relatively clear waters dominated by the California current. The Monterey Submarine Canyon results in a strong upwelling of nutrient-rich water. Consequently, the nearshore waters are highly productive, supporting diverse floral and faunal assemblages.

Circulation within the Bay is influenced by a variety of factors: offshore currents, seasonal periods of upwelling, winds, the Monterey Submarine Canyon, and river discharges.

Geological Features and Habitat

The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The underlying rock types range from pre-Tertiary granites with some intrusions south of Monterey Bay to softer sedimentary rocks underlying Monterey Bay and areas to the north. Covering these rocks in most areas are three sedimentary types: rocky substrate dominate in nearshore areas north and south of Monterey Bay; fine sand and coarser sand are found in the Bay's nearshore areas; and mud which predominates offshore except for a large sandy shelf extending off Point Sur. The Monterey Submarine Canyon has a mixture of mud and sand with some rock outcrops. Fringing the waters of the area, the shoreline ranges from rocky and mountainous south of the Bay to sand dunes from Seaside north to Moss Landing and to sand bluffs to the north. There are also numerous small and some large rivers that empty into the Bay with one large estuary, Elkhorn Slough, and several smaller ones.

While there are submarine canyons elsewhere in the Oregonian province, the Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon, along with adjacent submarine canyons, enriches local water through strong seasonal upwellings, modifies currents and provides habitat for pelagic communities. Monterey Bay itself is a rare geological feature along the Pacific coast as it is one of the few large bays. This fact lends additional importance to this area as a resting and staging area for migrating birds.

The diversity of rock types, sediment types and shoreline characteristics in combination with the nutrient rich waters and substantial underwater relief all combine to form several habitat assemblages. This variety of assemblages is one of the major determinants of the rich intertidal and subtidal communities and represents the range of habitats to be found in the Oregonian province.

Flora and Fauna

Monterey Bay has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds and some seabirds is outstanding. The fish stock, particularly in Monterey Bay, is rich and the variety of crustaceans is high.

The Bay has the most diverse algal community in North America, with about 450 to 500 species of west coast algae represented. The diversity of habitat assemblages, rich nutrients close to shore, the high quality waters and the location of the Bay quite close to the overlap of the Californian and Oregonian biogeographic provinces, account for this diversity.

The habitats created by the variety of substrate, kelp beds, the canyon complex and the nutrient rich waters support rich fish stocks and substantial invertebrate populations. The various environments within the study area support different fish communities, with Monterey Bay and the granitic substrate just to the south supporting the highest diversity. The invertebrate diversity also reflects the variety of habitat types. Over 300 species of invertebrates have been reported off Point Año Nuevo.

The area also supports one of the greatest diversities of marine mammals in the world. Among these are several endangered species, including the California gray whale (*Eschrichtius robustus*), finback whale (*Balaenoptera physalus*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter catodon*), and the threatened California sea otter (*Enhydra lutris*).

All species of pinnipeds commonly found off the central and northern California coast are found in the Monterey Bay area. Año Nuevo is one of the most important sites and has been cited as the most important pinniped rookery and resting area in central and northern California.

The area also encompasses approximately one-third of the entire sea otter range in California. The majority of otters are found south of the Monterey Peninsula (females and pups) with the northern peripheral group of the entire population found between Soquel Point and Elkhorn Slough.

Most of the cetacean species known to frequent the central and northern California coast have been sighted in the area. Many, such as the gray whale, pass through the area while on a northerly or southerly migratory route. However, the edge of the canyon complex does serve as an excellent feeding area due to strong nutrient upwellings.

Monterey Bay plays a major role for avifauna as a staging habitat during both migrations and as wintering and summer habitat. Bird species diversity is very high. The area is attractive due to the nutrient waters and resulting rich food resources, the protected bay environment, and location along the Pacific flyway. Breeding populations are generally small and scattered. The entire world population of the Ashy Storm-Petrel (*Oceanodroma homochroa*) (5000–10,000) can be found feeding in the area immediately above the Monterey Submarine Canyon from August to November.

Critical Habitat

Critical habitats are areas that are essential for spawning and breeding and are crucial to the survival of particular species. Because of the highly productive waters of the Bay area, several critical habitats have been identified in Monterey Bay and its surrounding waters.

The California sea otter is an endangered species whose females and pups are found primarily in the sheltered coves south of Monterey Peninsula. The highest densities of otters occur in rocky nearshore areas within the 20 meter isobath in the dense kelp canopy. These areas have been identified as critical breeding and feeding locations essential to existence of current and future populations of sea otters.

Earth's entire population of Ashy Storm-Petrels feed over the Monterey Canyon from August to November. Waters over the canyon are a critical feeding area that is important to survival of the species.

Point Año Nuevo is a critical breeding habitat for elephant seals (*Migrounga*

anguestirostris), Stellar sea lions (*Eumatopias jubata*) and harbor seals (*Phoca vitulina*). Año Nuevo Island, with its small surface area, is the focus of virtually all pinniped breeding activity taking place in the area, and may be the key to the continued survival of these populations in central and northern California.

Año Nuevo Island is also a critical habitat for breeding elephant seals as well as the mainland Point Año Nuevo. The marine environment immediately around the island and mainland point may also be critical. However, the extent of feeding activity taking place in the waters near the island is unknown.

There are other very important sites, including the spawning grounds of the market squid (*Loligo opalescens*) in Monterey Bay and the nesting sites for seabirds along the shoreline and on small offshore rocks.

Human Uses

Research Opportunities

The biological and physical characteristics of Monterey Bay combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers.

Six major research facilities are found in the area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources.

The Hopkins Marine Station is located in Pacific Grove. As part of Stanford University, its primary research efforts focus on cellular and developmental biology, immunology, and neurobiology of intertidal organisms. Other research is focused on the ecology of the rocky intertidal zone of the Hopkins Marine Life Refuge offshore of the laboratory grounds.

The Moss Landing Marine Laboratory of San Jose State University is located along the central coast of Monterey Bay. Its researchers conduct a variety of research including oceanography, ichthyology, marine algae, invertebrates, and marine mammal and seabird behavior. The Laboratory operates the R/V *Point Sur* for its oceanographic research.

The Long Marine Laboratories and the Center for Coastal and Marine Studies of the University of California at Santa Cruz also conduct a variety of research projects on topics such as cetaceans, pinnipeds (especially at Año Nuevo), sea otters, invertebrates, and plankton.

The Naval Postgraduate School is located near downtown Monterey and is operated by the United States Navy. The research focus at this institution is exclusively on physical oceanography. The school shares access to the oceanographic research vessel maintained by the Moss Landing Marine Laboratory.

The Granite Canyon Marine Laboratory, located along the Big Sur coastline just south of Carmel, is operated by the California Department of Fish and Game. Its primary research emphasis is on aquaculture and water quality monitoring.

The Monterey Bay Aquarium is a privately owned institution with a variety of research interests focused on the Bay and the Monterey Canyon. The recent establishment of the Monterey Bay Research Institute, the Monterey Bay Aquarium's research arm, will enable the Aquarium to devote resources to studying several aspects of the Bay's ecosystems. Extensive research is planned to examine the Monterey Canyon via a remote-operated unmanned submersible. Other research efforts will be wide-ranging and include biological, chemical, physical, and geological oceanography and studies on the canyon's benthic and pelagic habitats.

Tourism and Recreational Uses

The diverse resources of Monterey Bay are enjoyed by the residents of this area as well as the numerous visitors. The population of Monterey and Santa Cruz countries was 544,000 in 1985 and is projected to increase to 755,000 by 2005. The projected growth is based in large part on the attractiveness of the area's natural beauty.

Since the late 1800's, Monterey Bay has served as a major tourist destination. The most recent estimate of visitors to the area by the Association of Monterey Bay Area Governments was approximately 18 million annually, indicating the important role tourism plays in supporting the local economy.

The 16 State beaches along the Bay's shoreline attracted over 3.5 million visitors during the last six months of 1986. The Monterey Bay Aquarium, opened in 1984, attracts nearly 2 million visitors annually. The Elkhorn Slough National Estuarine Research Reserve operates an interpretive center which serves 30,000 to 40,000 visitors per year. The Año Neuvo State Reserve has an interpretive center and offers guided tours around the Reserve to observe the elephant seal breeding colonies established on the mainland. Annual visitors to this area number approximately 150,000. The Point Lobos State Reserve just south of Carmel receives approximately 300,000 visitors per year.

Commercial and Industrial Uses

The area also supports several economic activities. The most important activity directly dependent on the resources is commerical fishing, which played an important role in the history of Monterey Bay and continues to be an important activity. Landings in excess of 10 million dollars are made yearly and account for approximately five percent of the total California harvest. Fishing takes place throughout the Bay and its offshore waters. The major commercial finfish species are the northern anchovy (*Eugraulis Mordax*), rockfish (*Sebastes sps*), mackerel (*Trachurus symmetricus*), albacore tuna (*Thunnus alalunga*), salmon (*Salmonidae*), and sablefish (*Anoplopoma timbria*). Squid are primarily in the southern half of the Bay and along the Big Sur coast. The commerical fisheries catch of 1986 accounted for 8.9 million dollars in wholesale value.

Related to fisheries are the several aquaculture operations within the Monterey Bay area. Dependent in large part on a clean source of ocean waters, some operations collect organisms directly from the Bay while others grow and produce their own supplies through captive breeding. Algae, abalone, otters, salmon, and sea hares are being raised in the various aquaculture ventures.

Making a more interest use of the area are the commercial ships which regularly traverse the outer reaches of the area as part of the route from San Franciso to Los Angeles, with infrequent vessel traffic to Moss Landing, Santa Cruz, or Monterey. Although this traffic is not yet a major concern, contingency plans designed to react to oil spills resulting from tanker accidents are being formulated.

Oil and gas exploration in the Bay area is being considered. On November 16, 1988, the Department of Interior's Minerals Management Service issued a Call for Information and Nomination for Oil and Gas Lease Sale #119, an area which overlaps a portion of the proposed Sanctuary study area.

Another use of the Bay area is for dredge and waste disposal. A site off Moss Landing is used for discharged dredge spoils. Municipal and industrial wastes are dumped into the waters at various outfalls. Non-point agricultural runoff is also entering the Bay.

Military uses of the area are rare, but onshore target practice necessitates prohibiting boats within a designated

area offshore of Fort Ord on an occasional basis.

Existing Protection of Marine Resources

Several agencies operate programs to protect significant resources within the Monterey Bay area and to provide recreational and interpretive opportunities. California Parks and Recreation and the California Department of Fish and Game manage 15 state beaches, 2 state reserves, 2 state parks, 1 wildlife area and ecological Reserve, Pacific Grove Marine Life Refuge, Point Lobos State Reserve, Carmel Bay Ecological Reserve, and the California Sea Otter Game Refuge. Elkhorn Slough National Estuarine Research Reserve provides resource management and protection to one of the most important estuaries in central California. Los Padres National Forest protects coastal resources where it borders the sea.

These programs have placed considerable emphasis on the protection of coastal resources but have not given the same attention to marine resources. Some critical marine areas, such as the waters around Año Nuevo Island and over the Monterey Submarine Canyon, receive no special attention by resource managers. Other areas, such as the waters of the Big Sur coastline, receive limited protection. A limiting factor that may hamper resource management is the lack of a mechanisn to establish research priorities and coordination, and develop contingency plans for potential accidents.

With current resources of existing programs being limited, the coordination of resource protection and management programs is essential. The Monterey Bay Sanctuary could provide an important role in such coordination.

The Designation Process

The management plan to be prepared for the proposed Sanctuary will specify the goals and objectives of Sanctuary designation and describe programs for resource protection, research and interpretation. The various administrative and regulatory alternatives to Sanctuary management will be analyzed in the environmental impact statement.

Opportunities for public participation in NOAA's development of an environmental impact statement and management plan will be provided through the January scoping meetings, solicitation of comments on the draft environmental impact statement and management plan, and formal public hearings.

The January scoping meetings will attempt to identify issues in establishing a Monterey Bay National Marine Sanctuary and generate suggestions for resolving them. Topics for discussion will include the following: (1) Boundary alternatives, (2) Management alternatives, (3) Resource protection, (4) Research opportunities and (5) Interpretive opportunities.

Dated: January 2, 1989.

Thomas J. Maginnis,

Assistant Administator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-278 Filed 1-5-89; 8:45 am]

BILLING CODE 3510-08-M

1987 Survey of Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1987. The report of survey results is required by the Atlantic Striped Bass Conservation Act. The intent is to provide information on the status of the striped bass fisheries.

ADDRESS: Copies of the survey results are available from David G. Deuel, NOAA/NMFS, 1335 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301 427-2347.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1987

Section 6 of the Atlantic Striped Bass Conservation Act (Pub. L. No. 98-613, 16 U.S.C. 1851) required the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey was to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of striped bass in the coastal states during the period considered in the survey. The results of each annual survey were to be published in the **Federal Register**. This report presents data for calendar year 1987 as required by section 6 of the Atlantic Striped Bass Conservation Act (The Act).

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 and 1987, funds were authorized but not appropriated. Thus, for calendar years 1985 and 1986, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, the National Marine Fisheries Service, of the U.S. Department of Commerce, routinely collects data on all U.S. commercial fisheries and on marine recreational fishing on the Atlantic, Gulf, and Pacific coasts. Data from these surveys are used in this report to satisfy the requirements of section 6 of the Act.

A description of the statistical survey procedures for the commercial landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1986" (U.S. Department of Commerce, 1987).

The Act addresses striped bass from Maine through North Carolina; the data presented here are for the same area. Commercial landings of striped bass in 1987 were 0.4 million pounds, an increase of 0.1 million pounds over the 1986 landings of 0.3 million pounds. The 1986 landings were the lowest on record. Maximum landings of 14.7 million pounds were recorded in 1973, and since then landings have steadily declined. Part of the decline since 1962 has resulted from restrictive regulations on the commercial fishery. Average landings for the 20 year period from 1968 to 1987 were 6.3 million pounds. However, from 1968 to 1987, landings averaged 9.9 million pounds, while from 1978 to 1987, landings averaged only 2.6 million pounds. For the last 5 years, an average of 1.3 million pounds was landed. Commercial landings by state from 1980 through 1987 are shown in Table 1. Figure 1 shows annual commercial landings from 1962 through 1987.

Estimates of catch and harvest of striped bass by recreational fishermen are available from the marine recreational fishery statistics surveys from 1979 through 1987. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish which are removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species which occur more frequently in the catch than for those which occur infrequently in the catch. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high variability of striped bass

catch estimates by state from year to year. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct.

In 1987, recreational fishermen caught an estimated 886,000 striped bass, of which 50,000 were harvested. The remaining 836,000 were released alive. The estimated weight of the 1987 striped bass recreational harvest was 0.9 million pounds. Table 2 presents estimates of the total recreational catch of striped bass by state from 1980 through 1987.

The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish in 1983–1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch in 1986 likely reflects the increased abundance of the 1982 and subsequent year classes, resulting from management measures providing nearly total protection to these year classes. The number of striped bass harvested has declined from about 1.3 million fish in 1979 to 50,000 in 1986, while the number released alive has increased as a percentage of the total catch. From 1979–1981, an average of 24 percent was released alive; from 1982–1987, an average of 75 percent was released alive; and in 1987, 94 percent of the fish were released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended), have had a significant impact on the level of the recreational harvest and of the commercial landings. Most new management regulations were put in place between 1982 and 1986, with those having the most impact being implemented during 1984, 1985, and 1986. These regulations include closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. Most significantly, a moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in marine waters of New York, Connecticut, and Rhode Island. Several other states prohibit sale of striped bass and have implemented a 33-inch minimum size limit. Bag limits range from 1 to 5 fish in states which allow recreational fishing.

Appropriate data from which to calculate estimates of striped bass population size have not been collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly impacted by management regulations. Thus, caution should be used in interpreting the landings data in recent years.

Dated: December 30, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1980–1987 .

State	1980	1981	1982	1983	1984	1985	1986	1987
Maine	**	1	—	—	—	1	—	—
New Hampshire	—	—	—	—	—	—	—	—
Massachusetts	886	708	643	224	107	119	96	78
Rhode Island	20	235	270	196	54	61	11	1
Connecticut	29	5	6	2	2	6	—	—
New York	598	822	471	310	595	469	—	—
New Jersey	24	14	10	20	9	12	10	—
Delaware	17	23	26	7	37	—	—	—
Maryland	2,101	1,641	518	446	1,108	43	8	33
Virginia	503	395	147	151	508	241	23	57
North Carolina	472	417	338	361	513	280	189	262
Total	4,650	4,261	2,429	1,717	2,933	1,232	337	431

Source: National Marine Fisheries Service, F/RE1, unpublished data.
Dash denotes none reported; ** denotes less than 500 pounds.
NOTE.—Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

TABLE 2.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1980–1987.

State	1980	1981	1982	1983	1984	1985	1986	1987
Maine	—	—	—	—	—	77	—	—
New Hampshire	0	—	0	—	0	—	0	—
Massachusetts	—	—	129	68	132	123	655	138
Rhode Island	—	—	—	—	72	50	—	107
Connecticut	42	—	555	45	41	41	—	95
New York	59	37	—	36	101	95	149	227
New Jersey	—	40	151	210	84	—	43	89
Delaware	0	0	0	—	—	—	0	—
Maryland	377	174	40	155	148	102	502	181
Virginia	0	0	0	—	—	—	—	—
North Carolina	—	576	0	—	—	—	—	0
Total	548	892	911	568	626	618	1,399	886

Estimates include both fish harvested and those released.
— = less than 30,000 reported.

0 = none reported.
Sources:
1979–1980: USDOC, 1984. Current Fishery Statistics No. 8322.
1981–1982: USDOC, 1985. Current Fishery Statistics No. 8324.
1983–1984: USDOC, 1985. Current Fishery Statistics No. 8326.
1985: USDOC, 1986. Current Fishery Statistics No. 8327.
1986: USDOC, 1987. Current Fishery Statistics No. 8392.
1987: National Marine Fisheries Service, F/RE1, unpublished data.

NOTE:—Restrictive regulations on the recreational fishery contributed to decreased catches since 1982.

BILLING CODE 3510-22-M

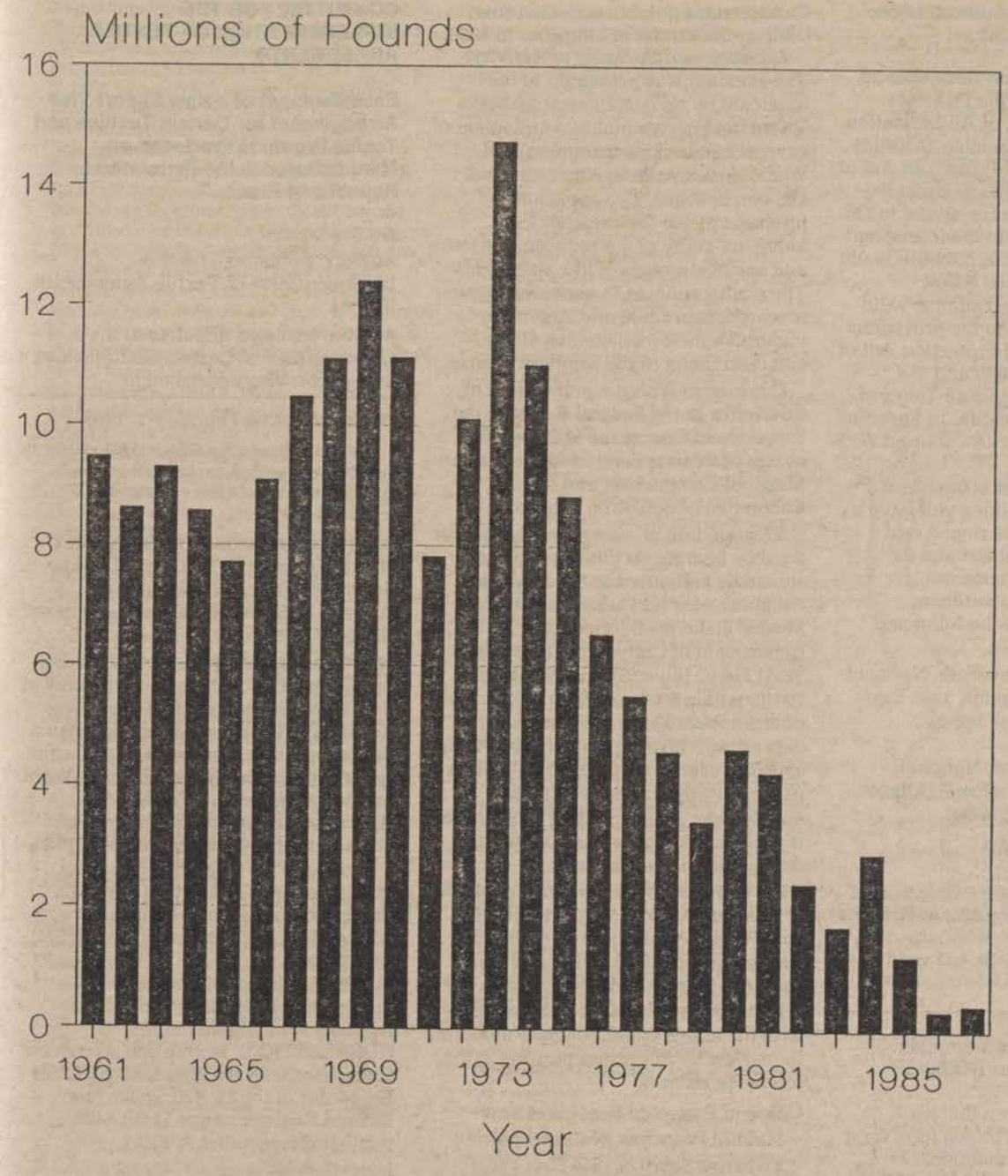

Figure 1. Reported Commercial landings of Striped Bass Along the Atlantic Coast, 1961-1987.

Note: Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

[FR Doc. 89-231 Filed 1-5-89; 8:45 am]
BILLING CODE 3510-22-C

Issuance of Letter of Authorization; Geophysical Service, Inc.

Notice is given that on December 30, 1988, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities, to the following: Geophysical Service Inc., 5801 Silverado Way, Anchorage, Alaska 99502.

This Letter of Authorization is valid for 1989 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subpart A and B).

Issuance of this letter is based on a finding that the total taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 30, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–223 Filed 1–5–89; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammals Permit; Karen W. Pryor (P438)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Applicant: Karen W. Pryor, 44811 South East 166th Street, North Bend, WA 98045.

Type of Permit: Scientific Research.

Name and Number of Animals: One (1) Skeleton of a Commerson's dolphin (*Cephalorhynchus commersonii*).

Type of Take: The applicant proposes to bring into the United States the skeleton of a beachwashed Commerson's dolphin collected from Chile at the Straits of Magellan in 1986.

Location and Duration of Activity: The skeleton was presented to the applicant by an American scientist in Tierra del Fuego who has a collection of several hundred museum-prepared whole skeletons from Argentine and Chilean beaches. The applicant proposes to use the skeleton for a hands-on-study of the behavior patterns and social structure of like specimens. The study proposes to encourage young researchers in Chile and Argentina to undertake their own studies of the cetacean fauna of the southern oceans.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910; and

Director, Northwest Region, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way, Seattle, Washington 99815.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: December 20, 1988.

[FR Doc. 89–280 Filed 1–5–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Textiles and Textile Products Produced or Manufactured in the Federative Republic of Brazil

January 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a new export visa arrangement.

EFFECTIVE DATE: February 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: During recent negotiations, the Governments of the United States and the Federative Republic of Brazil agreed to establish a new export visa arrangement under the terms of the new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988.

A copy of the visa arrangement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedules of the United States (see **Federal Register** notice 53 FR 44937, published November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 3, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and

Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1989, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool and man-made fibers in Categore 200–239, 300–369, 400–469 and 600–670, including part and merged categories (see enclosure A), produced or manufactured in Brazil and exported on and after February 1, 1989 from Brazil for which the Government of the Federative Republic of Brazil has not issued an appropriate visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category(s) is added to the agreemeent or becomes subject to import quotas shall require a visa. Notification will be provided when additions or changes are made.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be the standard nine diget, letter format, beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and a six digit numerical serial number identifying the shipment; e.g., 9BR123456.

2. The data of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity provided for in the U.S. Department of Commerce CORRELATION and in the U.S. Tariff Schedule(s) of the United States Annotated (e.g., "Cat. 340–510 DZ").

Quantities must be stated in whole number. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Categories 347/348 may be visaed as 347/348, or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable to the U.S. Customs Service, a new visa must be obtained from the Brazilian Government or a visa waiver requested by the Brazilian Government, issued by the U.S. Department of Commerce and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any applicable quota requirements.

If the visa is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Brazil has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of the Federative Republic of Brazil authorizes the entry and any charges to the agreement levels through the visa waiver process.

Merchandise imported for the personal use of the importer and not for resale, regardless or value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry and shall not be charged to the agreement levels.

A facsimile of the visa stamp is enclosed with this letter.

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of textiles and textile articles of cotton, wool and man-made fibers have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exceptions to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Enclosure A

Merged Categories: 300/301, 317/326, 334/335, 338/339/638/639, 342/642, 347/348, 410/624, 445/446, 647/648.

Part Categories:

369–D—Only HTS numbers 6302.60.0010 and 6302.91.0020.

369–O—All HTS numbers in Category 369 except 6302.60.0010 and 6302.91.0020 in Category 369–D.

604–A—Only HTS number 5509.32.0000.

604–O—All HTS numbers in Category 604 except 5509.32.0000 in Category 604–A.

669–P—Only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

669–O—All HTS numbers in Category 669 except 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[FR Doc. 89-237 Filed 1-5-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 14 and October 21, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 40252 and

41397) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to poduce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Cover, Telescope Mounting
1430–00–773–2030
Bag, Cargo
1670–01–065–3748
Stamp, Rubber
7520–00–NSH–0001
7520–00–NSH–0002
7520–00–NSH–0003
7520–00–NSH–0004
7520–00–NSH–0005
7520–00–NSH–0006
7520–00–NSH–0007
7520–00–NSH–0008
7520–00–NSH–0009
7520–00–NSH–0010
7520–00–NSH–0011
7520–00–NSH–0012
7520–00–NSH–0013
7520–00–NSH–0014
7520–00–NSH–0015
7520–00–NSH–0016
7520–00–NSH–0017
(Requirements for McClellan Air Force Base, California only)

Service

Janitorial/Custodial, FAA Facility, Williamsport Lycoming Airport, Montoursville, Pennsylvania.

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–235 Filed 1–5–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodities

Trap, Roach, Monitor
3740–01–096–1632
Cover, Mattress
7210–00–715–9130

Services

Janitorial/Custodial, U.S. Customhouse, 423 Canal Street, New Orleans, Louisiana.

Janitorial/Custodial, James M. Hanley Federal Building and U.S. Courthouse, 100 South Clinton Street, Syracuse, New York.

Janitorial/Custodial, U.S. Army Reserve Center, 2997 North 2nd Street, Harrisburg, Pennsylvania.

Deletions

It is proposed to delete the following commodities from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Pencil, Mechanical
7520–00–285–5816
Pin, Tent, Wood
8340–00–261–9752

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–236 Filed 1–5–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Honor Code and Honor System at the U.S. Military Academy Special Commission; Meeting

Subject: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy

Name of Subcommittee to Meet: Panel on Wider Perspective of Professional and Public Service.

Date of Meeting: 21 January 1989

Time: 1300–1600

Place: I.T.T. Main Conference Room, 5th floor, New National Geographic Building, 1600 M Street, NW., Washington, DC.

Proposed Agency:

1. Review of plenary commission meeting.

2. Discussion of professional and public service as it applies to graduates of the U.S. Military Academy

Point of Contact: Executive Secretary to the Commission, LTC James O. Younts III, 695–1983.

[FR Doc. 89–260 Filed 1–5–89; 8:45 am]
BILLING CODE 3710–08–M

Billing Procedures for Carriers Handling DoD Freight

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DoD.

ACTION: Rules for billing procedures on selected traffic by all methods of transportation.

SUMMARY: DoD is modifying the billing procedures for carriers handling freight for DoD. These procedures will be published in the Rules Publication, MFTRP Freight Traffic Rules Publication

No. 10 (RAIL) and MTMC Freight Traffic Rules Publication No. 1A (MOTOR) as they are issued or reissued. These modified procedures will assist DoD in easy identification of carrier billings and will expedite processing of carriers' vouchers for payment on these selected billings.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Lamm, Headquarters, Military Traffic Management Command, ATTN: MT–INFQ, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, or telephone (202) 756–1173.

SUPPLEMENTARY INFORMATION: The Prompt Payment Act, as amended in November 1986, allows prepayment audit of transportation Government bills of lading (GBLs) prior to payment. This authority has been delegated to DoD. These modified procedures will assist in this function and will prevent unnecessary delay in payment of the carriers' vouchers.

The following rule is established for all modes of traffic to cover GBLs for which the total charge(s) is $10,000 or more.

Item: Exception to Billing Procedures

Individual GBLs for which the total charge for services rendered is $10,000 or more will be submitted on a Public Voucher for Transportation Charges (SF 1113) separate from other GBLs for which the charges are less than $10,000. Several GBLs, each having individual charges of $10,000 or more, may be presented on the same voucher.

The following rule is established for movement of "Guaranteed Traffic" from Defense Depots at Columbus, OH, Memphis, TN, Mechanicsburg, PA, Richmond, VA, Tracy, CA, and Ogden, UT.

Item: Billing Procedures (Guaranteed Traffic)

1. Charges for services rendered for Guaranteed Traffic shipments from points identified abvove are shown in block 28 of the GBL. The actual amount billed when rounded to the nearest dollar will not exceed the amount shown in block 28 of the GBL.

a. If there is a disagreement with the charges shown in block 28, the carrier must contact the shipping activity to resolve the disagreement prior to submitting the bill for payment. If it is determined that the charge(s) shown in block 28 of the GBL is incorrect, the shipper will prepare a GBL Correction Notice (SF 1200) showing the correct charges. A copy of this correction notice must accompany the original bill of lading and voucher when submitted for payment.

b. If an agreement cannot be reached between the shipper and carrier on what the charges should be, the carrier will submit this GBL on a separate voucher to the appropriate finance center which will forward to MTMC for audit prior to payment.

2. Voucher(s) submitted for payment will include only GBLs covering Guaranteed Traffic moved under the solicitation and applicable tender. All vouchers submitted covering Guaranteed Traffic shipments must contain the statement "Guaranteed Traffic" either stamped or printed in bold letters on the face of the voucher.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer with the Federal Register.

[FR Doc. 89–277 Filed 1–5–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (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 Director, Office of Information Resources Management, publishes this 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) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 3, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Program of Special Projects and Demonstrations.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 49
Burden Hours: 1,372
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by public and non-profit rehabilitation facilities, designated State units, and other public and private agencies and organizations to apply for funding under the Special Projects and Demonstrations Program. The Department will use the information to make grant awards and to prepare the annual report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: State Agency Project Reporting.
Frequency: Triennially.
Affected Public: State or local governments.
Reporting Burden:
Responses: 4,053
Burden Hours: 1,487
Recordkeeping:
Recordkeepers: 0

Burden Hours: 0

Abstract: State agencies and local educational agencies must submit an application for a grant to the State educational agency. The State educational agency will use the information to distribute grant awards.

[FR Doc. 89-272 Filed 1-5-89; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed Survey of Nonutility Electric Power Procedures

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request for comments. Proposed Energy Information Administration survey of nonutility electric power producers.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is proposing to collect annual data from nunutility electric power producers, including cogeneration, small power, and independent power production facilities. The Form EIA-867 "Nonutility Power Producer Report," has been designed by the EIA for this purpose. The survey is designed to collect data on nonutility electricity production, fuel consumption, and installed capacity. The survey will be of nonutility entities who currently own, operate, or plan to own or operate within 5 years of the reporting year, electric generating facilities of 1 megawatt or more, that are interconnected to an electric utility with the capability to provide power to the utility. Based on the results of this collection, consideration will be given to a statistical sample for future collections with periodic frame evaluation. The purpose of this notice is to solicit comments on the proposed form, a copy of which is included in the notice. Provisions for confidentiality of the data are included in the form and instructions.

DATE: Written comments must be submitted on or before February 21, 1989.

ADDRESS: Send written comments to Ms. Mary Kimbrough (EI-541), Energy Information Administration, Department of Energy, Mail Stop: 2G-090, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-8749.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or additional copies of the form and instructions should be directed to Ms. Kimbrough at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Requests for Comments

I. Background

In order to fullfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy (DOE) Organization Act (Pub. L. 95-91), the Energy Information Administration (EIA) is obliged to publish, and otherwise make available to the public, high-quality statistical data that reflect current and prospective national and regional electric power supply and demand activity as accurately as possible. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA is tasked to conduct surveys that encompass every major electric power supply and demand activity in the United States. With the exception of power generated by nonutility power producers, all major sources of supply are currently covered. Nonutility power supply data in terms of generating capacity, actual generation, and fuel consumption are needed by the EIA to support its data collection program. These data were collected on a monthly basis prior to 1979 and the collection was discontinued due to the low electrical growth in the industries. Since growth in nonutility electrical generation is now large, the need to fill the gap in these data series has become critical.

The EIA will also use the information collected on this form for its forecasting and analysis responsibilities to estimate generating capacity requirements beyond announced plans. Analytical studies include the role of nonutility generation under increased deregulation of the generating system; in supporting emergency or brownout conditions due to droughts, stroms, and other weather conditions; overload of the generating system due to extremely high demand, etc.

Under section 210 of Public Utility Regulatory Policies Act of 1978 (PURPA), the Federal Energy Regulatory Commission (FERC) was directed to develop rules to encourage cogeneration and small power production. As of September 30, 1988, over 4,000 facilities had filed with the FERC for status as qualifying cogenerators and/or small power producers under PURPA, representing 72 gigawatts of capacity. Another objective of the proposed survey is to collect data that will evaluate PURPA implementation.

II. Request for Comments

Prospective respondents (see page 1 of the instructions) and other interested parties should comment on the proposed survey within 45 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will you require to complete and submit the form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If yes, specify the agency, data elements and means of collection.

As a potential data user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data? What are their deficiencies and/or strengths? How do you use them?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in the proposed survey.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the survey. These comments will become a

matter of public record. Depending on the magnitude and substance of comments received, formal meetings may be held to review their incorporation in this data collection. If meetings are held, commentators will be notified of the dates, times, and locations.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974 (15 U.S.C. 764(a), 764(b), 772(b) and 790(a).

Issued in Washington, DC, December 27, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M

U.S. Department of Energy
Energy Information Administration

FORM EIA-867
NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Form Approved
OMB Number: xxxx-xxxx
(Expires 12-31-xx)

This report is mandatory under Public Law 93-275, the Federal Energy Administration Act of 1974. The Energy Information Administration (EIA) requires this information from nonutility power producers (cogenerators, small power producers, and independent power producers) that own, operate, or plan to own or operate within 5 years of the end of the reporting year electric generating facilities with a total capacity of 1 megawatt or more that are interconnected to an electric utility and have the capability to provide power to the utility. The data collected will augment the EIA's data on electric power production and consumption. See confidentiality provisions in Section F of the instructions. Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards (EI-73), Forrestal Building, Washington, D.C., 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C., 20503. If you have additional questions, contact Mary Kimbrough of the EIA at (202) 586-8749. Return completed form to:

U.S. Department of Energy
Energy Information Administration
Mail Stop: BG-094 (EIA-867)
1000 Independence Avenue, S.W.
Washington, D.C. 20585

SCHEDULE I. IDENTIFICATION AND CERTIFICATION

Each entity is required to complete Schedule I. If you do not own, operate, or plan to own or operate a nonutility generating facility with a capacity of 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility, complete Schedule I only and return the form to the EIA.

For EIA Use Only
EIA Entity Code _____

1. Legal Name of Entity: _____

2. Principal business office mailing address at end of the reporting year:
_____
_____
_____

3. Mailing address for this form, if different from Item 2:
_____
_____
_____

4. Contact Person:
Name _____
Title _____
Telephone (_____) ____ - _____ Extension _____

5. If you do not own, operate, or plan to own or operate a nonutility generator facility with a capacity of 1 megawatt or more, or are not capable of providing electric power to a utility, check this box [_]. If you checked the box and have filed previously with the Federal Energy Regulatory Commission (FERC) for status as a qualifying facility (QF) under the Public Utility Regulatory Policies Act (PURPA), please provide the FERC QF docket number(s) and an explanation of why your plans have changed: _____
_____.

6. Certifying Official for the company (may be contact person): I certify that the information provided herein, including preprinted data, is accurate to the best of my knowledge.
Name _____
Title _____
Telephone (_____) ____ - _____ Extension _____
Signature _____ Date _____

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

For EIA Use Only
EIA Entity Code _____
EIA Facility Code _____

Legal Name of Entity: _____

SCHEDULE II. ELECTRIC FACILITY INFORMATION

Complete Schedule II for each existing facility of 1 megawatt or more and for each planned facility of 1 megawatt or more that would generate electricity within 5 years of the end of the reporting year. Complete only Items 1 through 7 and 12 for each planned facility. A separate sheet is required for each facility. Make photocopies of this schedule, as necessary. If the facility is jointly owned and/or operated, a single owner or operator should complete the entire form. If the facility was sold during the reporting year, complete the form for the portion of the year you owned the facility.

1. Facility Name (that houses electric generating equipment):
_____

2. Facility Street Address: _____
_____
City _____
State (2-letter postal abbreviation) ____ ZIP _____

3. Does an electric utility or any of its corporate entities own part of the facility? |_| Yes |_| No
If Yes, enter the utility name(s): _____
_____
_____

4. If facility was sold during the reporting year, enter the name and address of the purchaser and the sale date:
Purchaser _____
Address _____
Sale Date (MM/YY) _____

5. Does the facility meet the requirements of a qualifying facility (QF) under PURPA?
|_| Yes |_| No |_| Unknown

6. Has application been made to FERC for QF status?
|_| Yes |_| No
If Yes, enter the FERC docket number(s): _____

7. List the names of all electric utilities to which you are interconnected. If electricity is provided to the utility under contract, report the capacity in kilowatts under contract as of the end of the reporting year:

Name	Kilowatts
_____	_____
_____	_____
_____	_____
_____	_____

8. Enter the total kilowatthours for the reporting year:
A. Generated at the facility ..... _____
B. Received from electric utilities and nonutilities..... _____
C. Delivered to electric utilities for resale... _____
D. Delivered to other end users..... _____
E. Used at the facility (A + B - C - D)..... _____

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

Legal Name of Entity: _____

For EIA Use Only
EIA Entity Code _____
EIA Facility Code _____

SCHEDULE II. ELECTRIC FACILITY INFORMATION (Continued)

9. For a topping cycle cogenerator:

A. Enter the net useful thermal energy output for reporting year: _____ million Btu

B. How was the useful thermal energy used (check all that apply):

☐ Direct Heating
☐ Process Steam
☐ Machine Drive
☐ Space Heating and Cooling
☐ Other, Specify _____

10. Enter the total quantity of fuel (in physical units and million Btu) consumed by generating units during the reporting year. Do not report data for water, wind, solar, and geothermal facilities.

	Quantity	Units	Quantity	Units
Coal.....	_____	thousand tons	_____	million Btu
Oil.....	_____	thousand barrels	_____	million Btu
Gas.....	_____	thousand cubic feet	_____	million Btu
Wood.....	_____	_____	_____	million Btu
Waste or Sludge...	_____	_____	_____	million Btu
Other, Specify....	_____	_____	_____	million Btu

11. For a generating facility with a capacity of 25 megawatts or more, report:

A. Quality of fuel consumed (to nearest 0.01 percent by weight) for:

	Sulfur	Ash
Coal.....	_____	_____
Oil.....	_____	xxxxxxxxxxxxxxx

B. The estimated removal efficiency for sulfur dioxide (to nearest 1 percent removed by weight) for flue gas desulfurization (FGD) equipment at 100 percent load. If no FGD equipment, enter "No FGD."

_____

C. The estimated removal efficiency for particulate matter (to nearest 1 percent removed by weight) for flue gas particulate collectors at 100 percent load. If no particulate collectors, enter "No Collectors."

_____

D. The equipment or process used to reduce nitrogen oxide (NOx) emissions (check all that apply):

☐ Low NOx burners
☐ Low Excess Air
☐ Flue Gas Recirculation
☐ Overfire Air
☐ Other, Specify _____

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

For EIA Use Only
EIA Entity Code _____
EIA Facility Code _____

Legal Name of Entity: _____

SCHEDULE II. ELECTRIC FACILITY INFORMATION (Continued)

12. Check the Standard Industrial Classification code or category (see Standard Industrial Classification Manual, Office of Management and Budget, 1987) of the primary business activity of the facility. If the entity's primary business activity is the generation, transmission, or distribution of electricity for sale, check code 49:

AGRICULTURE, FORESTRY, AND FISHING
- |_| 01 Agricultural production - crops
- |_| 02 Agricultural production - livestock and animal specialities
- |_| 07 Agricultural services
- |_| 08 Forestry
- |_| 09 Fishing, hunting, and trapping

MINING
- |_| 10 Metal mining
- |_| 12 Coal mining
- |_| 13 Oil and gas extraction
- |_| 14 Mining and quarrying of nonmetallic minerals, except fuels

|_| (15 to 17) CONSTRUCTION

MANUFACTURING
- |_| 20 Food and kindred products
- |_| 21 Tobacco products
- |_| 22 Textile mill products
- |_| 23 Apparel and other finished products made from fabrics or similar materials
- |_| 24 Lumber and wood products, except furniture
- |_| 25 Furniture and fixtures
- |_| 26 Paper and allied products
- |_| 27 Printing, publishing, and allied industries
- |_| 28 Chemicals and allied products
- |_| 29 Petroleum refining and related industries
- |_| 30 Rubber and miscellaneous plastics products
- |_| 31 Leather and leather products
- |_| 32 Stone, clay, glass, and concrete products
- |_| 33 Primary metal industries
- |_| 34 Fabricated metal products, except machinery and transportation equipment
- |_| 35 Industrial and commercial machinery and computer equipment
- |_| 36 Electronic and other electrical equipment and components, except computer equipment
- |_| 37 Transportation equipment
- |_| 38 Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
- |_| 39 miscellaneous manufacturing industries

TRANSPORTATION AND PUBLIC UTILITIES
- |_| 40 Railroad transportation
- |_| 41 Local and suburban transit and interurban highway passenger transportation
- |_| 42 Motor freight transportation and warehousing
- |_| 43 United States Postal Service
- |_| 44 Water transportation
- |_| 45 Transportation by air
- |_| 46 Pipelines, except natural gas
- |_| 47 Transportation services
- |_| 48 Communications
- |_| 49 Electric, gas, and sanitary services

|_| (50 to 51) WHOLESALE TRADE

|_| (52 to 59) RETAIL TRADE

FINANCE, INSURANCE, AND REAL ESTATE
- |_| 60 Depository institutions
- |_| 61 Nondepository credit institutions
- |_| 62 Security and commodity brokers, dealers, exchanges, and services
- |_| 63 Insurance carriers
- |_| 64 Insurance agents, brokers, and service
- |_| 65 Real estate
- |_| 67 Holding and other investment offices

SERVICES
- |_| 70 Hotels, rooming houses, camps, and other lodging places
- |_| 72 Personal services
- |_| 73 Business services
- |_| 75 Automotive repair, services, and parking
- |_| 76 Miscellaneous repair services
- |_| 78 Motion pictures
- |_| 79 Amusement and recreation services
- |_| 80 Health services
- |_| 81 Legal services
- |_| 82 Education services
- |_| 83 Social services
- |_| 84 Museums, art galleries, and botanical and zoological gardens
- |_| 86 Membership organizations
- |_| 87 Engineering, accounting, research, management, & related services
- |_| 88 Private households
- |_| 89 Miscellaneous services

|_| (91 to 97) PUBLIC ADMINISTRATION

|_| NONCLASSIFIABLE ESTABLISHMENTS, explain _____

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

Legal Name of Entity: _____

For EIA Use Only
EIA Entity Code _____

SCHEDULE III. ELECTRIC GENERATING UNIT INFORMATION

Complete one box for each generating unit located at the facilities reported on Schedule II. Make photocopies of Schedule III, as necessary. Provide information on generating units that are operating, out of service, retired, sold, under construction, canceled during the reporting year, or proposed to operate within 5 years of the reporting year. Combine all wind turbines at the same facility and report as a single generating unit.

1. FACILITY NAME (from Schedule II, Item 1): _____

2. GENERATING UNIT IDENTIFICATION (4 characters or less,e.g.,GEN1, GEN2): _____

3. NAMEPLATE RATING (kilowatts): _____

4. STATUS (check one):
- |_| Operating
- |_| Out of Service
- |_| Retired
- |_| Sold
- |_| Under Construction
- |_| Planned
- |_| Indefinitely Postponed
- |_| Canceled
- |_| Other, Specify _____

5. GENERATION START DATE (MM/YY): ___/___

6. FACILITY TYPE (check one):
- |_| Cogenerator
- |_| Small Power Producer
- |_| Cogenerator and Small Power Producer
- |_| Other, Specify _____

7. PRIME MOVER (check one):
- |_| Combined Cycle/Gas Turbine
- |_| Combined Cycle/Steam Turbine
- |_| Gas (combustion) Turbine
- |_| Internal Combustion Engine
- |_| Steam Turbine
- |_| Wind Turbine
- |_| Solar (photovoltaic)
- |_| Hydro Turbine
- |_| Fuel Cell
- |_| Other, Specify _____

For EIA Use Only
EIA Facility Code _____

8. ENERGY SOURCES:

Primary	Other	
|_|	|_|	Coal
|_|	|_|	Oil
|_|	|_|	Gas
|_|	|_|	Wood
|_|	|_|	Waste or Sludge
|_|	|_|	Geothermal
|_|	|_|	Wind
|_|	|_|	Solar
|_|	|_|	Hydro
|_|	|_|	Nuclear
|_|	|_|	Other, Specify

_____

1. FACILITY NAME (from Schedule II, Item 1): _____

2. GENERATING UNIT IDENTIFICATION (4 characters or less,e.g.,GEN1, GEN2): _____

3. NAMEPLATE RATING (kilowatts): _____

4. STATUS (check one):
- |_| Operating
- |_| Out of Service
- |_| Retired
- |_| Sold
- |_| Under Construction
- |_| Planned
- |_| Indefinitely Postponed
- |_| Canceled
- |_| Other, Specify _____

5. GENERATION START DATE (MM/YY): ___/___

6. FACILITY TYPE (check one):
- |_| Cogenerator
- |_| Small Power Producer
- |_| Cogenerator and Small Power Producer
- |_| Other, Specify _____

7. PRIME MOVER (check one):
- |_| Combined Cycle/Gas Turbine
- |_| Combined Cycle/Steam Turbine
- |_| Gas (combustion) Turbine
- |_| Internal Combustion Engine
- |_| Steam Turbine
- |_| Wind Turbine
- |_| Solar (photovoltaic)
- |_| Hydro Turbine
- |_| Fuel Cell
- |_| Other, Specify _____

For EIA Use Only
EIA Facility Code _____

8. ENERGY SOURCES:

Primary	Other	
|_|	|_|	Coal
|_|	|_|	Oil
|_|	|_|	Gas
|_|	|_|	Wood
|_|	|_|	Waste or Sludge
|_|	|_|	Geothermal
|_|	|_|	Wind
|_|	|_|	Solar
|_|	|_|	Hydro
|_|	|_|	Nuclear
|_|	|_|	Other, Specify

_____

U.S. Department of Energy
Energy Information Administration

INSTRUCTIONS FOR FORM EIA-867 NONUTILITY POWER PRODUCER REPORT -- 1988
(for facilities with a capacity of 1 megawatt or more)

Form Approved
OMB Number: xxxx-xxxx
(Expires 12-31-xx)

GENERAL INFORMATION

A. PURPOSE

Form EIA-867 collects information annually from U.S. nonutility power producers that are interconnected to an electric utility and have the capability to provide power to the utility. Generating units for emergency purposes (e.g., hospital backup electricity), at temporary sites (e.g., logging camps), or offshore on oil rigs or ships are excluded for the purposes of this report. The information is required by the Energy Information Administration (EIA) to augment data on U.S. electricity production and consumption. The data will be used for statistical and analytical purposes.

B. WHO MUST REPORT

Nonutility power producers in the United States that operate, or plan to operate within 5 years of the end of the reporting year one or more electric generating facilities with a capacity of 1 megawatt or more that are interconnected to an electric utility and have the capability to provide power to the utility (see "reporting entity" under definitions) are required to complete this form. For reporting purposes, a planned facility is defined as a facility with generating equipment under construction, on order, or proposed and expected to produce electricity within 5 years of the end of the reporting year.

C. WHERE AND WHEN TO REPORT

The signed original and one copy of Form EIA-867 must be submitted to the EIA on or before April 1 following the reporting year. Typed submissions are preferred; legible, hand-printed forms are acceptable. Retain one copy of the completed form for your files. For additional information, contact Mary Kimbrough, (202) 586-8749. Return completed form to:

U.S. Department of Energy
Energy Information Administration
Mail Stop: BG-094 (EIA-867)
1000 Independence Avenue, S.W.
Washington, D.C. 20585

D. DEFINITIONS

Capacity (Installed Nameplate): The full-load continuous rating of a generator, prime mover, or other electric power production equipment under specified conditions as designated by the manufacturer. Installed nameplate capacity is usually indicated on a nameplate attached physically to the equipment.

Cogenerator: A generating facility that produces electric power and another form of useful energy (such as heat or steam) through the use of one energy source. Also see topping cycle cogenerator.

Facility: A location at which prime movers, electric generators, and/or equipment for converting mechanical, chemical, and/or nuclear energy into electric energy are situated. A facility may contain more than one type of prime mover.

Generating Unit: Any combination of physically connected generator(s), reactor(s), boiler(s), combustion turbine(s), or other prime mover(s) operated together to produce electric power.

Independent Power Producer (IPP'S): IPP's are wholesale electricity producers, other than qualifying facilities (QF's) under the Public Utility Regulatory Policies Act (PURPA), that are unaffiliated with franchised utilities in the area in which the IPP's are selling power, and that lack significant market power. Unlike traditional utilities, IPP's do not possess transmission facilities that are essential to their customers and do not sell power in any retail service territory where they have a franchise.

Interconnection: A connection between two electric systems permitting the transfer of electric energy in either direction.

Net Thermal Output: The thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.

Nonutility Power Producer: An entity that is a corporation, person, agency, authority, or other instrumentality that generates electricity to: (1) satisfy all or part of the entity's electricity demand, and/or (2) sell electricity to electric utilities. The entity's primary purpose in generating electricity is not to sell the electricity at retail. Cogenerators, small power producers, and IPP's are examples of nonutility power producers.

Prime Mover: The engine, turbine, water wheel, or similar machine that drives an electric generator; or a device that converts energy to electricity directly (e.g., photovoltaic solar and fuel cells).

Qualifying Facility (QF): A cogenerator or small power producer that meets certain ownership, operating, and efficiency criteria established by the Federal Energy Regulatory Commission (FERC) (FERC) pursuant to PURPA, and has filed with the FERC for QF status or has self-certified (see the Code of Federal Regulations, Title 18, Part 292).

Reporting Entity: A nonutility power producer that owns or operates a generating facility, or plans to operate a generating facility within 5 years of the end of the reporting year. The nonutility power producer can be: (1) a qualifying cogeneration and/or small power production facility with an installed generating capacity of 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility, or (2) an IPP whose facility installed generating capacity is 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility. If a reporting entity operates electric generating facilities in several locations, each location is considered a facility.

Small Power Producer (SPP): A generating facility that produces electric power using renewable resources such as water power, solar energy, wind, geothermal, biomass or waste, or any combination thereof as a primary energy source, and has an installed generating capacity that is not more than 80 megawatts. Fossil fuels can be used; however, the renewable resources must provide at least 75 percent of the total energy input.

Topping Cycle Cogenerator: A cogenerator in which the energy output is first used to produce electric power and at least some of the reject heat from the power production is used to provide useful thermal energy. Also see cogenerator.

E. GENERAL INSTRUCTIONS

1. The Form EIA-867 has three schedule. Schedule I, "Identification and Certification," requests information about the reporting entity. Schedule II, "Electric Facility Information," requests information about the facility, e.g., plant. Schedule III, "Electric Generating Unit Information," requests information about each generating unit at each facility.

2. The EIA will complete the EIA entity and facility codes.

3. All information on the form, including preprinted information, must be accurate. If preprinted information is incorrect, draw a line through the incorrect entry and provide the correct information.

4. Information provided should be actual data to the extent possible. Estimates should be provided and so noted when actual data are not available. Quantitative data should be reported to the nearest whole number.

5. If more than one sheet is required to complete Schedules II or III, photocopy the schedule.

F. SANCTIONS AND CONFIDENTIALITY STATEMENTS

This report is mandatory under Public Law 93-275, the Federal Energy Administration Act of 1974. Failure to comply may result in criminal fines, civil penalties, and other sanctions as provided by law. Information on Form EIA-867 is collected for statistical purposes and will not be published by the Department of Energy (DOE) in individually identifiable form. The information contained on this form will be kept confidential to the extent that it satisfies the criteria for exemption in the Freedom of Information Act (FOIA), the DOE regulations implementing the FOIA, and the Trade Secrets Act, 18 U.S.C., Section 1905. Upon receipt of a request for this information under the FOIA, the DOE shall, in accordance with the procedures and criteria provided in 10 C.F.R. Section 1004.11, make a final determination whether the information is exempt from disclosure. To assist us in this determination, respondents should demonstrate to the DOE that, for example, their information contains trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position. A letter accompanying the submission that explains (on an element-by-element basis) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination. A new justification does not need to be provided each time information is submitted on the form, if your company has previously submitted a justification for that information and the justification has not changed. Except as otherwise provided by law, the information may be made available in response to an order of a Court of competent jurisdiction, or, upon request, to other components of the Department of Energy, to any committee of Congress, the General Accounting Office, or other Congressional agencies authorized by law to receive such information. Detailed provisions of the restrictions on the disclosure of this information can be found in the Policy on the Disclosure of Individually Identifiable Energy Information in the Possession of the Energy Information Administration (45 Federal Register 59812(1980)).

G. SPECIFIC INSTRUCTIONS

SCHEDULE I. IDENTIFICATION AND CERTIFICATION

Each entity is required to complete Schedule I. If you do not own, operate, or plan to own or operate a nonutility generating facility with a capacity of 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility, complete Schedule I only and return the form to the EIA.

Item

1. Enter the legal name of the organization, company, corporation, individual, or the nonutility power producer to whom the form applies.

2-6. Self-explanatory.

SCHEDULE II. ELECTRIC FACILITY INFORMATION

Complete Schedule II for each existing facility of 1 megawatt or more and each planned facility of 1 megawatt or more that would generate electricity within 5 years of the end of the reporting year. A separate sheet is required for each facility. Make photocopies of the schedule as necessary. Item 11 is to be completed only by facilities of 25 megawatts or more. Enter the sheet number and the total number of sheets in the upper right hand corner. Items 1 to 12 are self-explanatory.

SCHEDULE III. ELECTRIC GENERATING UNIT INFORMATION

Complete one box for each generating unit located at the facilities reported on Schedule II. Make photocopies of Schedule III as necessary. Provide information on generating units that are operating, out of service, retired, sold, under construction, cancelled during the reporting year, or proposed to operate within 5 years of the end of the reporting year. Combine all wind turbines at the same facility and report as a single generating unit. Enter the sheet number and the total number of sheets in the upper right hand corner. Items 1 to 8 are self-explanatory.

Form EIA-867 Instructions (12-15-88)

[FR Doc 89-269 Filed 1-5-89; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket Nos. ER89-140-000 et al.]

Mississippi Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 3, 1989.

Take notice that the following filings have been made with the Commission:

1. Mississippi Power & Light Company

[Docket No. ER89-140-000]

Take notice that on December 23, 1988, Mississippi Power & Light Company (MP&L) tendered for filing a notice of cancellation of two letter agreements between MP&L and Tennessee Valley Authority (TVA). Supplement Nos. 25 and 26 to MP&L's Rate Schedule FERC No. 35 are canceled in accordance with the terms of each Supplement.

Copies of this filing have been mailed to the Mississippi Public Service Commission and to TVA.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER88-525-000]

Take notice that on November 25, 1988, Commonwealth Edison Company (Edison), in response to a request from Commission Staff, submitted additional cost and operational data to support a proposed rate for Limited Term Capacity reflected in a revised Interconnection Agreement between Edison and Central Illinois Light Company.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Bangor Hydro-Electric Company and New England Power Company

[Docket No. ER89-12-000]

Take notice that on December 5, 1988, Bangor Hydro-Electric Company (Bangor) tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to New England of 20,000 KW of electric generating capability during November 1, 1988 through October 31, 1989 and the total output associated therewith.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER89-141-000]

Take notice that on December 23, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Wholesale Firm Power Contract, between KCPL and the City of Pomona, Kansas dated December 15, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of the date of filing, and therefore requests waiver of the Commission's notice requirements.

Comment date: January 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER89-142-000]

Take notice that on December 23, 1988, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 4 to the Contract for Electric Service between PNM and the City of Gallup, New Mexico (City). Amendment No. 4 provides for PNM to furnish certain services to City such that City can utilize its allocation of long-term firm power and energy from the Salt Lake City Area Integrated Projects. For these services, in lieu of the demand, energy, and service charges set forth in the Contract for Electric Service, City will pay a service charge of $4.33/kW-month which reflects the non-generation related costs of providing such services, as well as a $1000/month fee for dispatch and administrative services.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that Amendment No. 4 be accepted for filing to be effective as of October 1, 1989.

Copies of the filing have been served upon City and the New Mexico Public Service Commission.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-254 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-496-000 et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP89-496-000]

December 29, 1988.

Take notice that on December 28, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-496-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Pacific Resources Company (Union Pacific), a producer, under the blanket certificate issued in Docket No. CP86-589-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated September 1, 1988, under its Rate Schedule TI-1, it proposes to transport up to 50,000 Mcf per day of natural gas for Union Pacific from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". CIG states that it would receive the gas at existing points on its system located in Kansas and Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, to Williams Natural Gas Company for the account of Union Pacific in Wyoming.

CIG advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89-56-000. CIG further advises that it would transport 45,000 Mcf on an average day and 16,425 MMcf annually.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP89-495-000]

December 29, 1988.

Take notice that on December 28, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-495-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Pacific Resources Company (Union Pacific), a producer, under the blanket certificate issued in Docket No. CP86-589-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated September 1, 1988, under its Rate Schedule TI-1, it proposes to transport up to 50,000 Mcf per day of natural gas for Union Pacific from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". CIG states that it would receive the gas at existing points on its system located in Kansas and Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, to Panhandle Eastern Pipe Line Company for the account of Union Pacific in Kansas.

CIG advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89-30-000. CIG further advises that it would transport 45,000 Mcf on an average day and 16,425 MMcf annually.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-440-000]

December 30, 1988.

Take notice that on December 16, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-367-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 10,000 MMBtu/day for Centran Corporation. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 10,800 MMBtu, 7,500 MMBtu and 3,650,000 MMBtu, respectively.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-446-000]

December 30, 1988.

Take notice that on December 16, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-369-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Conoco, Inc., a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 20,000 MMBtu/day for Conoco, Inc. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 20,000 MMBtu, 15,000 MMBtu and 7,300,000 MMBtu, respectively.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89-475-000]

December 30, 1988.

Take notice that on December 22, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-475-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Central Gas Marketing Company (American Central), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport up to 200,000 MMBtu/day for American Central. Natural states that construction of facilities would not be required to provide the proposed service.

Natural further states that the maximum day, average day, and annual transportation volumes would be approximately 200,000 MMBtu, 35,000 MMBtu and 12,775,000 MMBtu, respectively.

Natural advises that service under § 284.223(a) commenced October 20, 1988, as reported in Docket No. ST89-1409.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Corporation

[Docket No. CP89-481-000]

December 30, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-481-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 206,000 MMBtu equivalent of natural gas on a peak day for Texaco's account, 206,000 MMBtu equivalent on an average day and 75,190,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Texaco's account at various existing points on United's system in Louisiana, offshore Louisiana, and Mississippi, and that United would deliver equivalent volumes for Texaco's account at existing points on United's system in Louisiana, Mississippi, Alabama and Florida. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 31, 1988, under the automatic authorization provisions of § 284.223 of

the Commission's Regulations, as reported in Docket No. ST89–1215.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Corporation

[Docket No. CP89–477–000]

December 30, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–477–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 312,090 MMBtu equivalent of natural gas on a peak day for Amoco's account, 312,090 MMBtu equivalent on an average day and 113,912,850 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Amoco's account at various existing points on United's system in Louisiana, and that United would deliver equivalent volumes for Amoco's account at existing points on United's system in Louisiana, Mississippi, Alabama and Florida. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 18, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1129.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Corporation

[Docket No. CP89–479–000]

December 30, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–479–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Louisiana State Gas Corporation (Louisiana State), an intrastate pipeline, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 309,000 MMBtu equivalent of natural gas on a peak day for Amoco's account, 309,000 MMBtu equivalent on an average day and 112,785,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Louisiana State's account at various existing points on United's system in Louisiana, Texas, and Mississippi, and that United would deliver equivalent volumes for Louisiana State's account at existing points on United's system in Louisiana, Mississippi, Alabama and Florida. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 20, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1063.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–486–000]

December 30, 1988.

Take notice that on December 23, 1988, Transcontinental Gas Pipeline Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–486–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport natural gas on an interruptible basis for Catamount Natural Gas, Inc. (Catamount). Transco explains that service commenced November 2, 1988, under § 284.23(a) of the Commission's Regulations, as reported in Docket No. ST 89–1166. Transco explains that the peak day quantity would be 250,000 dt, the average daily quantity would be 50,000 dt, and that the annual quantity would be 18,250,000 dt. Transco explains that it would receive natural gas for Catamount's account at Vermilion Block 310–A, Offshore Louisiana and deliver the gas at an existing point of interconnection between Transco and Pennsylvania Gas and Water Company in Luzerne County, Pennsylvania.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–487–000]

December 30, 1989.

Take notice that on December 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP89–487–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act for Catamount Natural Gas Company (Catamount), all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport natural gas on an interruptible basis for Catamount pursuant to a transportation agreement dated September 15, 1988. Transco explains that service commenced November 2, 1988, under §284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1139–000. Transco further explains that the peak day quantity would be 743,200 dekatherms, the average daily quantity would be 50,000 dekatherms, and that the annual quantity would be 18,250,000 dekatherms. Transco explains that it would receive natural gas for Catamount's account at Vermilion Block 310–A, offshore Louisiana and would redeliver natural gas for Catamount's account to Philadelphia Electric Company at Philadelphia, Pennsylvania.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-252 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-483-000 et al.]

EL Paso Natural Gas Company et al; Natural Gas Certificate Filings

January 3, 1989.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP89-483-000]

Take notice that on December 23, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-483-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon from interstate service certain existing compression, pipeline and plant facilities, with appurtenances, hereinafter referred to as the "Terrell Facilities," being located in Terrell, Val Verde and Crockett Counties, Texas, and the related service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that the facilities and service were authorized as follows: by order issued December 15, 1960, at Docket No. G-19966, authorization was granted to construct and operate, *inter alia*, the Brown Bassett Gathering System and the Terrell Purification and Dehydration Plant ("Terrell Plant"); by order issued November 6, 1980, at Docket No. CP66-306, authorization was granted to construct and operate, *inter alia*, the 15-mile J. M. Field to Terrell Plant 24-inch pipeline, the J. M. Field Gathering System, a 24-inch O.D. orifice-type check meter, and additional purification and dehydration facilities; and by authority of the order issued April 17, 1972, at Docket No. CP72-113, El Paso constructed the 13,500-horsepower Terrell Field Compressor.

El Paso states that the Terrell Facilities have high operating costs. Moreover, it is indicated that El Paso's gas reserves from the Brown Bassett and J. M. Fields have declined by eighty percent. El Paso states that the costs associated with the operation of the Terrell Facilities result in an extremely high unit cost because the facilities are now processing only a fraction of the originally designed plant throughput. Additionally, El Paso states that the decline in reserves has forced all wells located in the Brown Bassett and J. M. Fields to be periodically shut-in or to free-flow gas because the Terrell Field Compressor did not have sufficient volumes to operate. El Paso states that to facilitate the production and transportation efforts of Shell Western E&P Inc. (Shell) in the proximity of the Terrell Facilities and to resolve El Paso's existing and future take-or-pay exposure, El Paso and Shell entered into a sales agreement dated October 21, 1988, permitting Shell to acquire El Paso's Terrell Facilities.

Accordingly, El Paso proposes to abandon by conveyance to Shell: (i) The Terrell Field Compressor; (ii) the J. M. Field to Terrell Plant pipeline; (iii) the Brown Bassett Gathering System; and (iv) the Terrell Plant. The application states that Shell intends to operate the Terrell Facilities as an integrated, non-jurisdictional gathering system. It is indicated that Shell has agreed to provide a gathering service (including metering, dehydration and delivery of such gas to El Paso) for El Paso's remaining gas purchase agreements and for others with supplies behind the Terrell Plant.

El Paso states that the abandonment of the Terrell Facilities would have a *de minimis* effect upon El Paso's system gas supply activities and would have no significant effect upon El Paso's ability to render existing natural gas service to its customers. Finally, El Paso maintains that there would be no adverse environmental effects upon the effectuation of the abandonment proposed herein.

Comment date: January 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-430-000]

Take notice that on December 15, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-430-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon Natural's firm sales delivery obligation to a Beatrice, Nebraska, fertilizer plant, owned by CEPEX, Inc. (CEPEX), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural and CEPEX restructured their service relationship to convert the firm sales services to firm transportation service. Specifically, Natural seeks permission and approval to abandon the firm sales delivery obligation of 27,741 Mcf of natural gas per day to the Beatrice fertilizer plant, in conjunction with the termination of the gas sales contract.

Comment date: January 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-470-000]

Take notice that on December 21, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket Nos. CP89-470-000 and CP88-522-002 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to restructure its sales and transportation services and to be compensated for maintaining the gas supply needed to provide firm sales service to customers which choose such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the service restructuring proposal will allow its firm sales customers to revise their current entitlements to sales service from Tennessee by electing service from among Tennessee's existing and proposed new sales and transportation services and to know in advance the price for Tennessee to acquire and maintain long-term firm gas supply for their benefit. Tennessee contends that the restructuring is necessary to restore balance between Tennessee's responsibility to provide merchant service and the customers' responsibility to pay for the gas supply required to provide that service. To accomplish the service restructuring, Tennessee proposes to establish a two-part gas pricing formula under which firm sales customers will pay a gas demand charge and a gas commodity charge based on an index of published spot prices.

Tennessee states that the key features of its restructuring proposal are as follows.

(1) Tennessee proposes to maintain its existing CD and GS rate schedules. Customers which elect to continue service under those rate schedules would retain their conversion rights under § 284.10 of the Commission's Regulations.

(2) Tennessee proposes to establish new Rate Schedules CDS and SGS for customers that want to restructure their service entitlement by electing any combination of daily and monthly firm sales entitlements within their current entitlements.

(3) CDS and SGS customers could elect standby sales service for up to 50 percent of their firm sales entitlements. In this regard, Tennessee, indicates that the subject application would amend Tennessee's application pending in Docket No. CP88–522–000 wherein it had proposed a standby service.

(4) A customer electing a zero firm sales entitlement would convert all of its prior firm sales entitlement to firm transportation.

(5) Tennessee requests authority to automatically abandon any firm sales entitlements relinquished by its customers in favor of the transportation service.

(6) Tennessee proposes a two-part gas pricing structure for its CD, CDS, SGS and partial requirements GS customers. The customer would pay a Gas Demand Rate of $7.00 per month per dekatherm of firm sales entitlement and a Gas Commodity Rate no higher than the average of an index of reported spot prices adjusted for fuel and losses. Full requirements customers purchasing under Rate Schedule GS would pay a one-part rate comprised of demand and commodity components derived from the CDS demand and commodity rates. If Tennessee increases the Gas Demand Rate or establishes a higher ceiling on the Gas Commodity Rate, the customers could renominate their firm entitlements.

(7) Tennessee proposes to eliminate the Purchased Gas Adjustment provision of its tariff and to direct bill the balance. In Account No. 191 as well as any future billing adjustments pertaining to periods prior to the effective date of its gas restructuring plan. Tennessee also proposes to directly reimburse the customers for any supplier refunds related to the prior periods.

(8) Tennessee would continue to provide firm and interruptible transportation under its Rate Schedules FT and IT, respectively, but proposes to eliminate the five receipt point limit on the number of receipt points a customer can include in its firm transportation contract. Tennessee proposes to establish limits on the capacity that a converting customer can obtain through each of Tennessee's supply area mainlines to reflect the design capacity of its system and Tennessee's firm capacity requirements. There would be no limits proposed on firm entitlements for conversion customers to transport through Tennessee's market area mainline.

(9) (a) Tennessee proposes to eliminate Rate Schedule G and to grandfather most G customers as eligible for service under Rate Schedule GS or SGS.

(b) Tennessee proposes to eliminate Rate Schedule E for emergency service and states that emergency service can be provided under its sales rate schedules, including Rate Schedule R.

(c) Tennessee proposes to revise the rate for service under Rate Schedule R to reflect the 100 percent load factor rate design recently required by the Commission and to eliminate any rate discount for an AQL-restricted customer that elects a monthly firm sales entitlement under Rate Schedule CDS or SGS which is below the monthly component of its AQL.

Comment date: January 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–484–000]

Take notice that on December 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–484–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of Delivery Point Entitlements (DPEs) on Transco's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authority to establish DPEs applicable to each delivery point and Facility Group on its pipeline system for all firm service customers other than customers under Transco's Rate Schedules G and OG. Transco states that over the past several significant changes in the pattern of customers' takes have occurred and have resulted in shifts of deliveries among delivery points, as well as in increased peak hourly rates of delivery relative to the total daily deliveries on Transco's system. As a result, Transco asserts that the flexibility which has been designed into Transco's pipeline facilities to accommodate fluctuating delivery rates and load shifting among delivery points is being taxed to the limit, and further shifts could threaten the integrity of firm deliveries to customers. Transco states that it is proposing to implement its DPE procedures which formalize the basis upon which the pipeline system was designed and is capable of operating.

To determine the individual delivery point and Facility Group DPEs, Transco states that it has reviewed the design capacity of its facilities and analyzed actual daily deliveries for each delivery point and Facility Group for five summer and winter periods. For purposes of the study, Transco states that it utilized a five-year period commencing May 1, 1982 and extending through April 30, 1987. In conducting the analysis, Transco states that the goal was to compare the design capability of Transco's facilities with actual maximum deliveries that Transco had historically delivered to each individual delivery point during the five summer and winter periods described above. In addition, Transco states that actual maximum deliveries were measured against the contracts and service obligations Transco has with its customers. As a result, Transco states that it has determined that the actual maximum volumes (firm and interruptible) delivered to the various delivery points and Facility Groups under normal design operating conditions were consistent with customers' firm contract entitlements and the design of Transco's facilities. Therefore, based on its analysis, Transco states that the maximum deliveries, the customers' contractual entitlements and the design of the pipeline facilities were compatible and consequently, each of these criteria were utilized to determine the applicable DPEs.

Transco asserts that its DPE proposal would not change its current operating practices, but will continue to provide customers with requested deliveries which are in excess of the DPEs to the extent physical operating conditions permit such deliveries and Transco is able reasonably to determine that such deliveries will not impair Transco's ability to provide firm service to other customers. Transco states that under its DPE proposal, customers will continue to nominate deliveries as they always have and, to the extent capacity exists, Transco will continue to schedule and deliver the requested volumes even in excess of the applicable DPEs. However, Transco notes that the proposed DPEs provide for some measure of deterrence (i.e. a penalty) to better assure that customer takes—over which Transco has no control—will not cause operational problems that will threaten the integrity of Transco's ability to maintain firm deliveries. Therefore, Transco proposes that to the extent a customer, without Transco's consent, unilaterally takes or refuses to cut-break its takes of gas at levels in excess of the DPEs, a penalty may be imposed pursuant to the provisions of the proposed DPE tariff sheets. Transco states that the proposed DPE procedures

and the specific DPEs proposed for each delivery point and customer are set forth in detail in the pro-forma tariff sheets contained in the application.

Comment date: January 24, 1989, in accordance with Standard Paragraph F at the end of the notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–488–000]

Take notice that on December 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–488–000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88–328–000 for authorization to provide gas for Amoco Production Company (Skipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 380,000 dt; on an average day would be 40,000 dt; and on an annual basis would be 14,600,000 dt.

Transco also states that it would receive the gas offshore and onshore Louisiana and deliver the gas at an existing point of interconnection between Transco and Florida Gas Transmission Company in St. Helena Parish, Louisiana. Transco states that it would construct no new facilities in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced November 2, 1988, pursuant to the 120-day automatic authorization in Docket No. ST89–1115.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–452–000]

Take notice that on December 23, 1988,[1] Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–452–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of G.A.S. Orange Development, Inc. (GAS) and to construct, prior to commencement of the transportation service, a sales tap to accommodate the delivery of natural gas under its blanket authorization issued in Docket Nos. CP82–413–000 and CP87–115–000 pursuant to section 6 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for GAS, an end-user, pursuant to a gas transportation agreement dated November 19, 1987. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of two years; provided, however that either Tennessee or GAS may terminate the agreement at any time upon at least 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 24,000 dekatherms; on an average day up to 24,000 dekatherms; and on an annual basis 8,760,000 dekatherms of natural gas for GAS. It is stated that GAS would pay Tennessee for all natural gas delivered pursuant to the transportation agreement in accordance with Tennessee's Rate Schedule IT–1. Tennessee states that it would transport natural gas for GAS from a receipt point located in Niagara Country, New York and deliver the gas to a meter to be built in the town of Lafayette, Onondaga County, New Year near Tennessee's M.P. 241–2+.01. It is alleged that the projected cost of the facilities to be constructed is $219,000. It is asserted that Tennessee would construct, own, operate and maintain a 6 inch hot tap and 2–6 inch tube measurement facility and DAC equipment and appurtenenant facilities. It is stated that GAS would reimburse Tennessee one-hundred percent of the construction costs.

It is explained that the Tennessee will not transport for GAS under the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations, but under the requested authorization.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corporation

[Docket No. CP89–453–000]

Take notice that on December 19, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89–453–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate for public convenience and necessity authorizing new and additional firm sales service to an existing resale customer and the construction and operation of facilities to implement the services, all as more fully set forth in the application on file and open to public inspection.

Applicant requests authorization to initiate winter service to South Jersey Gas Company (South Jersey) of 10,000 dekatherms per day (dk/d) under Applicant's Rate Schedule WS with a winter contract quantity of 500,000 dth and to increase South Jersey's contract demand under Applicant's Rate Schedule CDS from 25,000 dt/d to 35,000 dt/d. Further, Applicant requests authorization to increase South Jersey's seasonal entitlement under Rate Schedule CDS from 4,562,000 dth per year to 5,062,500 dth per year to be effective on July 1, 1989, and to additionally increase South Jersey's seasonal entitlement from 5,062,500 dth per year to 6,887,500 per year to be effective on November 1, 1990.

In order to implement the above services, Applicant proposes to construct approximately 8.1 miles of 24-inch loop pipeline in Adams and York Counties, Pennsylvania. Applicant estimates that the cost of construction for these mainline facilities to be $5,610,000, which Applicant proposes to finance from internally generated funds.

Comment date: January 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Algonquin Gas Transmission Company

[Docket No. CP89–489–000]

Take notice that on December 27, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to establish a new delivery point for Pequot Gas Company (Pequot) under Algonquin's blanket certificate issued in Docket No. CP87–317–000, all as more fully set forth in the request which is on file with the

[1] The request under blanket authorization was tendered for filing on December 16, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until December 23, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Commission and open to public inspection.

Algonquin proposed to construct a new measuring and regulating station for Pequot on land owned by Algonquin adjacent to Algonquin's existing pipeline facilities in Stonington, Connecticut. Algonquin states the estimated cost of these facilities is $388,000. Algonquin states that it seeks to transfer the maximum daily delivery obligation under firm service agreements that currently exist between Algonquin and Pequot at the Westerly, Rhode Island delivery point to the new Stonington, Connecticut delivery point. The Westerly delivery point would remain as an alternate delivery point for Pequot with zero delivery obligation. Accordingly, Algonquin states that its peak day or annual commitments under firm service agreements would not be affected by construction of the new station.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP89-423-000]

Take notice that on December 15, 1988, Trunkline Gas Company (Trunkline), P. O. Box 1542, Houston, Texas, 77251-1642, filed in Docket No. CP89-423-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for TXG Gas Marketing Company (TXG), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport up to 30,000 Dt. equivalent of natural gas per day on behalf of TXG pursuant to a transportation agreement dated October 28, 1988 between Trunkline and TXG. The transportation agreement, it is said, provides for Trunkline to receive gas from various existing points of receipt on its system. It is said that Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Southern Natural Gas Company in St. Mary Parish, Louisiana.

Trunkline further states that the estimated daily and annual quantities would be 7,000 Dt. and 2,555,000 Dt., respectively. Service under § 284.223(a) commenced on November 5, 1988, as reported in Docket No. ST89-1267.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Trunkline Gas Company

[Docket No. CP89-429-000]

Take notice that on December 15, 1988, Trunkline Gas Company (Trunkline), P. O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-429-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for V.H.C Gas Systems, L.P. (V.H.C), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport up to 30,000 Dt. equivalent of natural gas per day on behalf of V.H.C. pursuant to a transportation agreement dated June 3, 1988 between Trunkline and V.H.C. The tranportation agreement, it is said, provides for Trunkline to receive gas from various existing points of receipt and on its system. It is said that Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois.

Trunkline further states that the estimated daily and annual quantities would be 25,000 Dt. and 9,125,000 Dt., respectively. Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No. ST89-1295.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Interstate Power Company

[Docket No. CP86-679-010]

Take notice that on December 22, 1988, Interstate Power Company (Interstate), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP86-679-010 a petition pursuant to section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity issued in Docket No. CP86-679-000 so as to authorize the continuation of transportation of natural gas on a firm basis for USI Chemicals Company, Inc. (USI) for a one-year period, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Interstate avers that in Docket No. CP86-679-008, it was authorized to transport up to a maximum of 18,000 MMBtu per day for USI for a term ending on March 4, 1989. It is stated that Interstate and USI seek to extend such transportation service until March 4, 1990. According to Interstate, Article 12 of the transportation agreement dated April 10, 1987, provides for a term which shall continue until cancelled with 120 days written notice. Therefore Interstate requests that the term of the certificate authorizing service be extended until March 4, 1990.

Comment date: January 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commisson's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18

CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-253 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-498-000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

December 30, 1988.

Take notice that on December 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-498-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Associated Intrastate Pipeline Company (Associated), an intrastate pipeline, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated June 9, 1988, under its Rate Schedule ITS, it proposes to transport for Associated up to 200,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at various existing points in Oklahoma, Texas, offshore Texas, Louisiana, offshore Louisiana, Illinois, New Mexico, Kansas, Iowa and Arkansas, and that it would transport and redeliver the gas at various delivery points in New Mexico.

Natural advises that service under § 284.223(a) commenced October 19, 1988, as reported in Docket No. ST89-1467 (filed on December 29, 1988). Natural further advises that it would transport 5,000 MMBtu on an average day and 1,825,000 MMBtu annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-255 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3502-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 19, 1988 through December 23, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-AFS-L82008-00, Rating LO, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA and OR.

Summary: EPA has not identified any potential environmental impacts that would require any changes to the preferred alternative.

Final EISs

ERP No.: F-COE-E32068-AL, Bayou La Batre Navigation Channel Improvements, Implementation, Mobile County, AL.

Summary: EPA finds the initial comments to the proposal were satisfactorily addressed and has no objections to the proposed project.

ERP No.: F-FHW-E40708-NC, NC-90 Replacement, NC-90 at Taylorsville to I-40 at Statesville, Funding, and Possible 404 Permit, Tredell and Alexander Counties, NC.

Summary: EPA recommended that additional consideration should be given to the replacement of the small wetland losses. Also, nonstructural noise mitigation measures should be examined for those residences experiencing significant impacts.

ERP No.: F-IBR-G28012-TX, San Jacinto River Basin Water Supply Project, Municipal and Industrial Water Use, Implementation, Montgomery, Harris, Grimes, Walker, San Jacinto, Fort Bend, Liberty and Waller Counties, TX.

Summary: EPA has no objections to the proposed action.

ERP No.: F-SCS-H36102-00, Pony Creek Watershed Protection and Flood Prevention Plan, Funding and 404 Permits, Missouri River Basin, Brown and Nemaha Counties, KS and Richardson County, NB.

Summary: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No.: F-UAF-E11020-NC, Seymour Johnson AFB, F-4 to F-15E Aircraft Conversion Program, Site Selection and Implementation, Wayne County, NC, Alternative Sites are Cannon AFB, NM; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV.

Summary: EPA continues to have serious concerns with noise impact problems associated with the implementation of this action. EPA recommends that the USAF addresses and resolve concerns.

Regulations

ERP No.: R-AFS-A61316-00, 36 CFR Part 251; Ski Area Permits—Proposed Rule (53 FR 40739).

Summary: EPA is concerned that the criteria established for granting ski area permits appear to rely on the presumption of a detailed analysis of ski area proposals at the Land Management Planning stage. EPA believes the rule should contain a provision whereby proposals that do not undergo full NEPA analysis at the management planning stage be subject to further NEPA analysis at the site-specific stage.

Dated: January 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-276 Filed 1-5-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3502-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

Availability of Environmental Impact Statements Filed December 26, 1988 Through December 30, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880425, DSuppl, COE, NJ, Great Egg Harbor Inlet and Peck Beach Erosion Control and Flood Protection, Implementation, Updated Information and Detailed Analysis, Ocean City, Cape May County, NJ, Due: February 21, 1989, Contact: Dr. Teruo Sugihara (215) 597–4833

EIS No. 880426, Final, FHW, KY, US 31E/150 (Bradstown-Louisville Road) Improvement, Brentlinger Road to US 31E/150, Funding and Corp of Engineer Permits, Jefferson, Bullitt, Spencer and Nelson Counties, NJ, Due: February 6, 1989, Contact: Robert E. Johnson (502) 227–7321

EIS No. 880427, Draft, NAS, PRO, Galileo Mission Project, Galileo Spacecraft Preparation and Operation Plan, Implementation, Solar System Exploration Program (Tier 2), Due: February 21, 1989, Contact: Dr. Dudley G. McConnell (202) 453–1287

EIS No. 880428, Final, SCS, MO, East Yellow Creek Watershed, Soil Erosion and Flood Damage Reduction Plan, Funding and Implementation, Sullivan, Linn and Chariton Counties, MO, Due: February 6, 1989, Contact: Russell C. Mills (314) 875–5214

EIS No. 880429, Final, COE, TX, Brooke Army Medical Center Replacement Facility Construction, Implementation, Fort Sam Houston, Bexar County, TX, Due: February 10, 1989, Contact: LCDR K. Hiatt (703) 756–0904

EIS No. 880430, Draft, IBR, CA, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA, Due: March 3, 1989, Contact: Bill Payne (916) 978–5488

EIS No. 880431, Draft, IBR, CA, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Rufuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo, Colusa and Solano Counties, CA, Due: March 3, 1989, Contact: Bill Payne (916) 978–5488

EIS No. 880432, Draft, IBR, CA, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Rufuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Countries, CA, Due: March 3, 1989, Contact: Bill Payne (916) 978–5488

EIS No. 880433, Final, COE, WA, Lummi Bay Navigation Channel Improvements and Marina Construction, Implementation, Lummi Indian Reservation, Whatcom County, WA, Due: February 6, 1989, Contact: Richard Makinen (202) 272–0166

Amended Notices

EIS No. 880420, Draft, NAS, MS, FL, LA, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parrish, LA and Slidell Computer Center, St. Tammany Parish LA, Due: February 6, 1989, Contact: Rebecca C. McCaleb (601) 688–3155. Published FR 12–23–88—Incorrect phone number

Dated: January 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–275 Filed 1–5–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 86–9; FCC 88–352]

Policies Governing the Provision of Shared Telecommunications Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Termination of inquiry.

SUMMARY: This action terminates an inquiry into the appropriate federal role with regard to Shared Telecommunications Services.

DATE: This termination is effective January 6, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in Common Carrier Docket 86–9, FCC 88–352, Adopted October 31, 1988, and Released December 6, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order

I. Introduction

1. On January 14, 1986 we adopted a Notice of Inquiry in this docket to examine regulatory issues involved in the development of Shared Telecommunications Service (STS) systems and the associated effects on the potential resale of local services, local exchange rates, and state regulation of STS implementation (51 FR 4536, Feb. 5, 1986). We adopted the Notice of Inquiry to examine issues identified in prior proceedings on STS.

A. Prior Proceedings

2. On May 16, 1985, International Business Machines (IBM) filed a request for declaratory ruling asking this Commission to declare that state laws and regulations precluding the competitive provision of STS systems are inconsistent with, and have been preempted by, existing Commission decisions and policies. In January 1986, we adopted the STS Order partially granting the IBM Petition. In the STS Order, we concluded that our existing interconnection policies require local exchange companies to interconnect partitioned STS switches that are either shared among multiple entities or used by third-party operators to provide PBX services to multiple users. However, we held that this interconnection right does not give customer premises equipment users or STS providers the right to resell local service, in violation of state restrictions, through an interconnected unpartitioned switch. We also found that our existing interconnection policies do not support a declaration that this Commission has preempted state regulations that prevent the resale of local exchange service by an STS operator. Since we concluded that our existing policies did not address the majority of issues raised in this proceeding, in the Notice of Inquiry we presented a wide range of issues to be decided before reaching any final conclusion on an appropriate federal role.

B. STS System Description

3. In an STS system, the occupants of a multitenant building or building complex use voice and data equipment

located on their premises to connect with a shared private branch exchange (PBX) or other customer premises equipment (CPE) (the STS switch) typically provided by the building owner, a user association, or an outside contractor. STS systems use communication and computer technologies to provide their users with local and interexchange basic service, and, in some cases, enhanced services. As we noted in the *NOI*, the STS switch permits users to call each other directly without using local exchange carrier (LEC) facilities and to call anywhere on the switched network through trunks that connect the STS switch with a subtending LEC central office. In addition, by aggregating their customers' demand for interexchange services, STS operators can purchase such services at bulk discounts and resell them to those customers at more favorable rates. Furthermore, the STS operator can use the least cost routing features included in most STS switches to resell interexchange services purchased from a variety of carriers.

4. There are two types of STS systems—those that use "partitioned" switches and those that use "unpartitioned" switches. In a partitioned switch, which does not involve the resale of local service, although lines from the central office are connected with the switch, software and special hardware treat these lines as if they directly connected to each tenant. A partitioned switch does not allow aggregation of user demand for local service, thus requiring the same number of access lines as if each user of the STS system was separately connected to the network. Moreover, each user of the partitioned switch receives a bill from the LEC. In contrast, an unpartitioned switch is connected to the LEC's central office using the minimum number of shared lines, determined through traffic engineering, required to meet overall system needs. By aggregating the requirements of all the users of the unpartitioned STS system, the lines to the central office can be more efficiently employed. Unpartitioned switches are often used by their operators to offer a form of local service resale to users because of the savings possible from their efficient engineering.

II. The Benefits and Costs of Unpartitioned STS

A. Benefits

5. Proponents of preemption of state STS restrictions argue that the provision of STS through unpartitioned systems benefits STS users, providers, LECs and society at large and promotes the federal interest in increasing the efficiency and availability of telecommunication-related services through competition. Such parties argue that the unrestricted provision of unpartitioned STS will save societal resources and reduce costs to end users while providing additional services and benefits to consumers. These commenters emphasize that the unpartitioned switch provides local and interstate service more efficiently and at a lower cost through the concentration of fewer central office trunks. While the LECs generally view STS providers as potential competitors and argue that there is little, if any, benefit from STS *per se*, some LECs and states indicate that STS could potentially benefit small users by enabling them to obtain PBX features that otherwise may not be available.

B. Costs

6. Most LECs emphasize that the unrestricted provision of unpartitioned STS systems will produce losses in LEC revenues and a consequent erosion of universal service. Some LECs also claim that unfettered STS development would lead to an increased likelihood of stranded LEC investment and increased difficulty in network planning. In addition, several commenters express concern that unpartitioned STS will lead to deaveraged rates because STS providers will "cream-skim" local exchange service by capturing businesses that provide the greatest contribution to network costs, leaving residential customers to pay significantly higher bills.

7. While opponents of unpartitioned STS emphasize the societal costs of using systems, most parties acknowledge that partitioning adds some costs to STS systems, although estimates of these costs vary widely. Some parties argue that a partitioning requirement makes STS economically unfeasible.

III. Legal Issues

8. In the Notice of Inquiry, we tentatively concluded that we had the authority to preempt state regulation of STS systems if we determine that important federal interests are jeopardized and no other methods exist to protect these interests. Parties opposed to federal preemption argue that sections 2(b) and 221(b) of the Communications Act proscribe federal jurisdiction over "charges, classification, practices, services, facilities, or regulations for or in connection with" intrastate communications. Supporters of preemption for STS, however, claim that widespread availability of efficient service is an area of longstanding federal interest and jurisdiction.

IV. State Regulation of STS

9. Although, as shown in the record leading to the STS Order, partitioning requirements remain the most significant restriction for STS providers, the record before us indicates that other state regulatory requirements also limit the development of STS. For example, some states regulate entry of STS systems into local exchange company service areas, while other states require that "joint use" or shared service only be provided on a nonprofit basis. Other states prohibit STS systems from permitting calling "behind the STS switch," *i.e.*, from one station in an STS system to another. Parties also extensively address state rate structures for STS systems and state limitations on the physical configuration, site, and ownership of STS systems.

10. On February 25, 1987, the Committee on Communications of NARUC adopted an STS Model State Policy (the State Model). The State Model says in part that "STS systems are in the public interest because they provide tenants with innovative and cost-effective communications, information processing and other building services that would otherwise not be economically available." The State Model asserts that partitioning should not be required, "in order to enhance the efficient use of the network." The State Model definition of STS requires "continuous premises under common ownership or management, except that the premises may be intersected by public or private rights-of-way." Moreover, the State Model recommends reduced regulation of entry, rates, and services.

V. Discussion

11. The record in this proceeding indicates that real savings are attainable from the use of STS systems, and that those savings may, to some degree, be reduced through partitioning and other regulatory restrictions imposed by state commissions. There are significant federal interests in realizing such savings and in the effects of state regulation of STS on such savings. An STS system provides interstate, as well as intrastate, access to its end users. Thus, state regulations that restrain the growth of STS technology can adversely affect this Commission's interests in increasing the efficiency of the local network in originating and terminating interstate communications. For example, by reducing the number of lines or trunks between STS subscribers and the

LEC network, an unpartititoned STS system enables subscribers to avoid unnecessary interstate subscriber line charges. We conclude, however, that these federal interests must be weighed against the concerns expressed by the states about the potential effect of STS systems on state policies governing the resale of basic local exchange service, as well as other intrastate services. As noted above, STS systems can be used for the resale of local basic service, a practice of traditional concern to state commissions. We have preempted state regulations regarding local resale only in very limited circumstances. Partitioning of STS systems, the regulatory requirement that is the principal focus of most of the commenters in this proceeding, is one way that states enforce restrictions on local resale. Weighing our federal interests in STS development against state concerns about the potential effects of STS on state policies regarding the resale of intrastate services, we conclude that we should not take any preemptive action on the issues presented in the Notice of Inquiry at this time. There may however, be individual factual circumstances where the federal interest is so significant that federal preemption would be warranted and the complaint process pursuant to section 208 of the Communications Act is available in these instances.

12. Furthermore, our review of the record in this proceeding presents additional reasons supporting this decision. As we stated in the Notice of Inquiry, we are concerned that the replacement of diverse state regulations with a single federal policy for STS may create significant problems, since the problems with STS systems may be different from state to state. Thus, varying state responses may be appropriate. We suggested that states could act as laboratories to test various means of regulating STS that may in the long run result in the most efficient STS policies. Since the release of the Notice of Inquiry, states have been exploring a variety of regulations involving STS that are tailored to their specific LEC and business environments. Most of the states do not require partitioning. With more experience, states may develop regulations that do not impede STS development, but do protect LEC revenues. The State Model, which reflects sensitivity to efficiency issues in STS regulation, may influence states to adopt regulatory approaches that promote STS development. In light of this progress and our sensitivity to state interests in this area, we conclude that the appropriate federal role at this time is to observe the progress of state regulation of STS, and STS development and not assert a broad based federal preemption of state regulations in this proceeding. If we become aware of additional problems that potentially impede our interests in this area, we will revisit these issues in the future. Accordingly, we terminate this inquiry.

VI. Ordering Clause

13. *It is Ordered*, that pursuant to sections 1, 4(i), 4(j), and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 201–205, this *docket is hereby terminated.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–234 Filed 1–5–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–071.

Title: American West African Freight Conference.

Parties:

America-Africa Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Iviorienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed modification makes changes to the Service Contract rule.

Agreement No.: 217–011203–001.

Title: Wallenius-NOSAC Space Charter and Cooperative Working Agreement.

Parties:

Wallenius Lines AB
Norwegian Specialized Autocarriers—NOSAC

Synopsis: The proposed modification substitutes Den norske Amerikalinje A/S as manager of the Norwegian Specialized Autocarriers—NOSAC for the existing manager Oivind Lorentzen A/S. Parties have requested shortened review.

Agreement No.: 212–011213–003.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification provides that a member's security bond may be retained for at least 270 days after its withdrawal from the Pool to ensure that all of its outstanding obligations are met.

By Order of the Federal Maritime Commission.

Dated: January 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–273 Filed 1–5–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Parish National Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and

summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 23, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Parish National Corporation*, Bogalusa, Louisiana; to acquire 100 percent of the voting shares of Parish National Bank of St. Tammany Parish, Covington, Louisiana.

Board of Governors of the Federal Reserve System, December 30, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-178 Filed 1-5-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Security Bank Holding Co.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Bank Holding Company Employee Stock Ownership Trust*, Coos Bay, Oregon; to acquire up to 24.9 percent of the voting shares of Security Bank Holding Company, Coos Bay, Oregon, and thereby indirectly acquire Security Bank, Coos Bay, Oregon.

Board of Governors of the Federal Reserve System, December 30, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-179 Filed 1-5-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 30, 1988.

Public Health Service

(Call Reports Clearance Office on 202-245-2100 for copies of package)

1. Cardiovascular Health Study (CHS)—NEW—A random sample of 5,336 men and women aged 65 and older will be selected from four communities. They will provide medical, social and demographic information and will participate in two clinical examinations to study risk factors for the onset and progression of clinical coronary heart disease and stroke, and related preclinical conditions. Individuals or households, Businesses or other for-profit, Small businesses or organizations.

	1st information collection	2d information collection
	Title—Cardiovascular Health	Physician Questionnaire
Number of Resondents	3,018	184
Number of Responses: Per Respondent	5.1	1
Average Burden: Per Response	.98	10

Total Burden Hours: 15,388

2. Common or Usual Name: Labeling of Peanut Spreads (21 CFR Part 102)—0910-0222—This regulation sets forth the nutritional requirements to be met if a non-standardized peanut spread is not to be labeled as "imitation" peanut butter. Respondents: Businesses or other for-profit: Number of Respondents: 40; Number of Responses per Respondent: 5; Average burden per Response: 107.4; Estimated Annual Burden: 2,148. This Burden is included in Nutritional Labeling, OMB NO. 0910-0177.

3. Application to Participate in the Public Health Capitation Program—0915-0089—The information collected from schools of public health is needed in order for the Public Health Service to determine the amount of the grants based on the number students reported and to audit grantee expenditures.

Respondents: Non-profit Institutions.

	1st information collection	2d information collection
	Title—Student Counts and Assurance on Non-Federal Funding—57.3504	Audits—57.3504(a)
Number of Resondents	26	26
Number of Responses: Per Respondent	1	1
Average Burden: Per Response	6 hours	1 hour

Total Burden Hours: 182

4. Identity Labeling of Food in Package Form—21 CFR 101.3—0910-0223—These regulations define what constitutes an imitation food product. Firms that manufacture substitute foods use the information to determine whether the term "imitation" is required on product labels. In addition these regulations specify when "imitation" cannot be used on the label.

Respondents: Businesses or other for-profit.

	1st Information Collection	2nd Information Collection
	Title: 21 CFR 101.3(e)(1)—Disclosure—Labeling (Approval of Language)*	21 CFR 101.3(e)(2) Disclosure Labeling (Approval of Language)*
Number of Respondents	0	0
Number of Responses Per Respondent	0	0
Average Burden Per Response	0	0

Total Burden hours: 1

* This burden is included in Nutritional Labeling, OMB No. 0910-01777

OMB Desk Officer: Shannah Koss-McCallum

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Certificate of Support—0960-0001—This form collects information which is used by the Social Security Administration to determine if the responder meets the one-half support requirement which is a requirement for entitlement to parents benefits, and is

required to meet the exception to Government Pension Offset (applicable in claims for spouse's benefits). Respondents: Individuals or households; Number of Respondents: 18,000; Frequency of Response: 15 minutes; Estimated Annual Burden: 4,500 hours.

2. Request for Earnings and Benefit Estimate Statement—0960–7004—The information will be used to provide a statement of earnings, quarters of coverage and future benefit estimates to individuals in response to requests. Respondents: Individuals or households; Number of Respondents: 6,000,000; Frequency of Response: 1; Average Burden Per Response: 5 minutes; Estimated Annual Burden: 500,000 hours.

OMB Desk Officer: Justin Kopca

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:
PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 3, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information Business Management.

[FR Doc. 89–283 Filed 1–5–89; 8:45 am]

BILLING CODE 4150–04–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 30, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–966–2088 for copies of package)

1. Request for Termination of Premium Hospital and/or Supplementary Medical Insurance—0938–0025—The HCFA–1763 is the form an individual completes when he/she wishes to terminate Medicare coverage. This form is the vehicle by which the SSA Program Services Center is made aware of the beneficiary's desire to withdraw from Medicare. Respondents: Individuals or households; Number of Respondents: 30,000; Frequency of Response: 1; Average Burden Per Response: .166; Estimated Annual Burden: 5,000 hours.

2. Application for Health Insurance Benefits under Medicare for Individuals with Chronic Renal Disease—0938–0080—The law requires the filing of an application to establish Medicare entitlement based on end-stage renal disease. The HCFA–43 is the application form used to obtain information needed to determine Medicare eligibility. It guides district office personnel in securing the required development and becomes a permanent part of the claims. Respondent: Individuals or households; Number of Respondents: 13,500; Frequency of Response: 1; Average Burden Per Response: .43; Estimated Annual Burden: 5,850.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. Registration of Cosmetic Product Establishment—0910–0027—The registration of cosmetic manufacturers and repackers supplies FDA with current locations for onsite inspection, addresses for information and regulatory mailings, business trading names supplying product distribution sources, and aids FDA in responding to Freedom of Information requests. Respondents: Small businesses; Number of Respondents: 50; Number of Responses Per Respondent: 1; Average Burden Per Response: 0.4; Estimated Annual Burden: 20 hours.

2. Notice of Discontinuance of Commercial Distribution or Cosmetic Product or Cosmetic Raw Material—0910–0029—The purpose of Form FDA 2514 is to notify the FDA of removal from commercial distribution of a cosmetic product or raw material previously filed with the FDA under 21 CFR 730 thereby allowing that data to be maintained in a current state. Respondents: Businesses or other for-profit, Small businesses or organizations; Number of Respondents: 850; Number of Responses Per Respondent: 3; Average Burden Per Response: 0.2; Estimated Annual Burden: 510 hours.

3. Cosmetic Product Ingredient Statement (21 CFR 720)—0910–0030—This information collection assists FDA in evaluating alleged injuries and adverse reactions from use of cosmetic products. It is also utilized in defining and planning analytical and toxicological studies. Data on ingredients and formulations is also available to other government agencies such as GAO, NCI, NIOSH, and the public and industry may access it through FOI. Respondents: Businesses or other for-profit, and small businesses or organizations.

	1st Information Collection	2nd Information Collection
	Title: Registration/ Amended product brand name/ ingredient change	Request for Confidentiality
Number of Respondents	280	12.5
Number of Responses Per Respondent	10	1
Average Burden Per Response	0.5	
Burden Hours	1,400	

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:
PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 3, 1989.

James E. Larson,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 89–284 Filed 1–5–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 88F–0381]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that a food additive petition has been filed by Betz Laboratories, Inc., proposing that the food additive regulations be amended to provide for the safe use of poly(isopropenylphosphonic acid), sodium salt in the manufacture of paper and paperboard for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4114) has been filed by Betz Laboratories, Inc., Somerton Rd., Trevose, PA 19047, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of poly(isopropenylphosphonic acid), sodium salt in the manufacture of paper and paperboard for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 22, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–188 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0427]

Cryovac Division of W.R. Grace & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cryovac Division, W.R. Grace & Co., has filed a petition proposing that the food additive regulations be amended by raising the limitation on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Cryovac Division of W.R. Grace & Co., P.O. Box 464, Duncan, SC 29334, has filed a petition (FAP 9M4117) proposing that § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) of the food additive regulations be amended by raising the limitation, in paragraph (d)(1) and (d)(3), on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 27, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–184 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0404]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/1,3-phenyleneoxyethylene isophthalate/terephthalate copolymer as a nonfood contact layer of food packaging laminates intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2–5 Kasumigaseki 3-chrome, Chiyoda-Ku, Tokyo 100, Japan, has filed a petition (FAP 8B4107), proposing that § 177.1395 *Laminate structures for use at temperatures between 120 °F and 250 °F* (21 CFR 177.1395) be amended to provide for the safe use of ethylene/1,3-phenyleneoxyethylene isophthalate/terephthalate copolymer as a nonfood contact layer of food packaging laminates intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 27, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–185 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82F–0309]

Monsanto Chemical Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of food additive petition 2B3655 proposing that the food additive regulations be amended to provide for the safe use of a mixture of partially hydrogenated terphenyl and quaterphenyl as components of adhesives for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 19, 1982 (47 FR 46576), FDA published a notice that it had filed a petition (FAP 2B3655) submitted by Monsanto Industrial Chemicals Co. (later named Monsanto Chemical Co.), 800 North Lindberg Blvd., St. Louis, MO 63167, proposing to amend § 175.105 *Adhesives* (21 CFR 175.105) of the food additive regulations to provide for the safe use of a mixture of partially hydrogenated terphenyl and quarterphenyl as components of adhesives for food-contact use. Monsanto Chemical Co. has now

withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 28, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-187 Filed 1-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0382]

Springborn Testing Institute, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by Springborn Testing Institute, Inc., on behalf of Enka bv, proposing that the food additive regulations be amended to provide for the safe use of carbethoxymethly-diethyl phosphonate as a stabilizer in polyethylene terephthalate and related polyesters for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4087) has been filed by Springborn Testing Institute, Inc., 20 Springborn Center, Enfield, CT 06082, on behalf of Enka bv, proposing that § 178.2010. *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of carbethoxymethyl-diethyl phosphonate as a stabilizer in polyethylene terephthalate and related polyesters for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 22, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-186 Filed 1-5-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing to Reconsider Disapproval of a Colorado State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 22, 1989, in Denver, Colorado to reconsider our decision to disapprove Colorado State Plan Amendment 88-11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Colorado State Plan Amendment 88-11 (SPA 88-11).

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Colorado SPA 88-11 consists of three separate attachment pages containing methods and standards for establishing payment rates for crossover situations involving institutional services, noninstitutional services and nursing home care. Crossover situations occur when a Medicaid recipient is also eligible for Medicare.

The issue in this matter is whether the methods and standards in the amendment violate sections 1902(a)(13)(A) and 1902(a)(30) of the Social Security Act and the implementing regulations at 42 CFR Part 447, Subparts B, C and D, which require that payments for services be consistent with efficiency, economy, and quality of care.

HCFA has determined that the methods and standards for inpatient and outpatient hospital claims cannot be approved because of the State's proposal to make no Medicaid payment where Medicare makes a payment. Section 3909 of the State Medicaid Manual provides that the minimum amount for which a State is responsible in crossover claims is the rate established in the State plan that is paid when a recipient is not also a Medicare beneficiary. In the case of a Medicaid recipient who is also entitled to Medicare, this amount may be satisfied, in whole or in part, by the Medicare payment. The provision in SPA 88-11 dealing with Medicaid payments on Part A inpatient and outpatient hospital service crossover claims limits reimbursement to the Medicare reimbursement. The State would have that option as long as Medicaid rates for these services, applicable to all recipients, including those who have Medicare, are established at equal to or below Medicare's reimbursement amount. The plan amendment does not provide for this and therefore, HCFA has determined that it is not consistent with 42 CFR Part 447, Subpart B. Under the amendment, reimbursement would be limited to the Medicare reimbursement even in cases where the Medicaid rate for the services exceeds the Medicare reimbursement.

HCFA has determined the methods and standards for other institutional services, non-institutional services and nursing home care cannot be approved. HCFA believes it is not clear from the language in these provisions that the Medicaid rate for services proposed for dual eligibles is at or above the established Medicaid rate for Medicaid eligibles who do not also have Medicare. The ambiguity arises from the use of the term Medicare maximum allowable "*reimbursement limit*" rather than payment rate (prior to application of deductibles and copayments). Therefore, HCFA has determined that the amendment does not establish the Medicaid rate as required by section 1902(a)(13)(A) of the Social Security Act and the implementing regulations at 42 CFR Part 447, Subparts C and D.

The notice to Colorado announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Ms. Irene Ibarra
Executive Director
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203–1714
Dear Ms. Ibarra:

I am advising you that your request for reconsideration of the decision to disapprove Colorado State plan amendment 88–11 [SPA 88–11) was received on December 2, 1988.

Colorado SPA 88–11 consists of three separate attachment pages containing methods and standards for establishing payment rates for crossover situations involving institutional services, non-institutional services and nursing home care.

The issues in this matter are whether the methods and standards in the amendment violate sections 1902(a)(13)(A) and 1902(a)(30) of the Social Security Act and the implementing regulations at 42 CFR Part 447, Subparts B, C and D which require that payments for services be consistent with efficiency, economy and quality care. In addition, HCFA will respond to your request for discovery in accordance with 42 CFR 430.86.

I am scheduling a hearing on your request to be held on February 22, 1989, at 10:00 a.m. in the 10th Floor Conference Room, Federal Office Building, 1961 Stout Street, Room 574, Denver Colorado 80294. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,

William L. Roper, M.D.

Administrator

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 89–251 Filed 1–5–89; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement, Special Consideration and Funding Priorities for Advanced Nurse Education Grants

The Health Resources and Services Administration announces that applications for Advanced Nurse Education Grants will be accepted in Fiscal Year 1989, and invites comments on the proposed funding priorities set forth below:

Section 821 of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Z, authorizes assistance to meet the costs of projects to (a) plan, develop and operate, (b) expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary of Health Human Services to require advanced education.

Eligible applicants are public and nonprofit private collegiate schools of nursing.

Approximately $4.8 million is being made available for competing awards for Fiscal Year 1989. It is estimated that approximately 27 competing projects averaging $182,172 will be supported.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education;

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which the education is to be provided and to promote their return to these States following educaiton;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and 42 CFR 57.2506;

(6) The capability of the applicant to carry out the proposed project;

(7) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

In addition, the following mechanisms as defined below may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For this program, the following Departmental special consideration and statutory funding priority will be applied and the following Departmental funding priorities are proposed:

Special Consideration

Special consideration will be given to: applicant institutions that indicate a clear financial need, and plan to sustain programs beyond the period during which Federal assistance is available. This special consideration was established and implemented in Fiscal Year 1988 and the Department is extending this special consideration for Fiscal Year 1989.

Funding Priority

Seciton 821(a) of the statute requires that the Secretary give priority to geriatric and gerontological nursing.

Proposed Funding Priorities for FY 1989

In addition, it is proposed to give a funding priority to the following:

(1) Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. This proposed priority was implemented as a special consideration in Fiscal Year 1988; and

(2) Applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management of those with HIV infection-related diseases. Health professionals are increasingly required to provide a wide range of services to HIV-infected persons. However, widespread organized formal curricula offerings for

these trainees are not in place. The proposed priority is designed to encourage new offerings.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before February 6, 1989, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the funding priorities will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–23), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6915.

Application materials should also be mailed to the Grants Management Officer at the above address.

Should additional progammatic information be required, please contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 5C–14, Rockville, Maryland 20857, Telephone (301) 443–6333.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance number is 0915–0060.

Multiple review cycles are held annually. The application deadline dates during Fiscal Year 1989 are March 1 and July 1.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Any application not meeting a particular deadline will be reviewed with applications meeting the subsequent deadline.

This program is listed at 13.299 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: December 6, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–246 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement, Special Considerations and Funding Priority for Grants for Nurse Practitioner and Nurse Midwifery Programs

The Health Resources and Services Administration announces that applications for Fiscal Year 1989, Grants for Nurse Practitioner and Nurse Midwifery Programs are being accepted under the authority of section 822(a) of the Public Health Service Act, as amended and invites comments on the proposed funding priority set forth below.

Section 822(a) of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Y, authorizes assistance to meet the costs of projects to (a) plan, develop and operate, (b) expand, or (c) maintain programs for the education of nurse practitioners and/or nurse midwives.

Eligible applicants are public or nonprofit private schools of nursing and public health, public or nonprofit hospitals, and other public or nonprofit private entities. Also eligible are public or nonprofit private schools of medicine which received grants or contracts under section 822(a) prior to October 1, 1985.

Approximately $4.4 million is being made available for new awards for Fiscal Year 1989. It is estimated that approximately 23 competing projects averaging $185,000 will be supported.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in Section 57.2405 of the program regulations and the Appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act;

3. The capability of the applicant to carry out the proposed project;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the project period.

In addition, the following mechanisms as defined below may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For Fiscal Year 1989, the following statutory and Departmental special considerations will be applied and the following funding priority is proposed.

Special Considerations

In accordance with the statute, Section 822, the Secretary will give special consideration to applications for grants for programs for the education of nurse practitioners and nurse midwives who will practice in health manpower shortage areas (designated under section 332 of the PHS Act) and for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care and long term care—including home health care and institutional care to such patients) and education to meet the particular needs of nursing home patients and patients confined to their homes.

Special consideration will also be given to applicants that indicate a clear financial need, and plan to sustain programs beyond the period during which Federal assistance is available. This special consideration was implemented in Fiscal Year 1988 and the Department is extending this special consideration for Fiscal Year 1989.

Proposed Funding Priority

For Fiscal Year 1989 it is proposed to give a funding priority to applicant institutions which demonstrate an increase in minority enrollment in the program which exceeds the program's prior 3-year average. This funding priority was implemented as a special consideration in Fiscal Year 1988.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before February 6, 1989, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for grant application materials, questions regarding grants policy and completed application materials should be directed to: Grants Management Officer (D–24), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6960.

Should additional programmatic information be required, please contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 5C–26, Rockville, Maryland 20857, Telephone (301) 443–6333.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Multiple review cycles are held annually. The application deadline dates during FY 1989 are March 1 and July 1.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Any applications not meeting a particular deadline will be reviewed with applications meeting the subsequent deadline.

This program is listed at 13.298 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: December 6, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–247 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 25, 1989, at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on January 25, 1989, from 9 a.m. to 10 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public January 25 from 10 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–209 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 27–28, 1989, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 6, C Wing.

The entire meeting will be open to the public from 9 a.m. to recess February 27, 1989, and 9 a.m. to adjournment February 28, 1989, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 27, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-213 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 9-10, 1989, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet on February 8; the Research Subcommittee at 1 p.m. in Building 31, Conference Room 9 and the Training Subcommittee at 8 p.m. in Building 31, Conference Room 9.

The Council meeting will be open to the public on February 9 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:30 p.m. on February 9 to adjournment on February 10 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on February 9, will be closed from 1 p.m. and 8 p.m., respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Ms. Arlene Zimmerman, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A-15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-215 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 23-24, 1989, at the National Institutes of Health, Building 31, A Wing, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on February 23, to adjournment on February 24, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1990. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: December 27, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-214 Filed 1-5-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on February 2, 1989, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 2, from 8:00 a.m. until 2:00 p.m. for a status report by the Director, National Institute on Aging, a report on the Biomedical Research and Clinical Medicine Program, a report on the Epidemiology, Demography, and Biometry Program, a report on the Advisory Committee to the Director, NIH, meeting and for discussions of program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on February 2 from 2:00 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C02, Bethesda, Maryland 20892, (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-216 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 23-24, 1989, Conference Room 10, Building 31,

National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on January 23 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on January 24 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2039, Bethesda, Maryland 20892, (telephone 301–496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institute; National Institutes of Health.)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–210 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of the National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 26–27, 1989, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 26 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public January 26, from approximately 1 p.m. to adjournment on January 27, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892, (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–211 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 26 and 27, 1989, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on January 26, from 8:30 a.m. to 11:30 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 26 from 11:30 a.m. to 6:00 p.m., and on January 27 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. David Wolff, Acting Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC]).

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–212 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Board of Regents and Subcommittees; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 26–27, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville, Pike, Bethesda, Maryland. The Subcommittees will meet on January 25 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, from 1 to 3 p.m., and the Planning Subcommittee, Conference Room A, Mezzanine, National Library of Medicine, from 3 to 4 p.m.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5 p.m. on January 26 and from 9 to approximately 10:45 a.m. on

January 27 for administrative reports and program discussions. The entire meeting of the Planning Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on January 25 will be closed to the public, and the regular Board meeting on January 27 will be closed from approximately 10:45 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–218 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Literature Selection Technical Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 2–3, 1989, convening each day at 9:00 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 2 will be open to the public from 9:00 a.m. to 12:00 noon for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92–463, the meeting will be closed on February 2 from approximately 12:00 noon to 5:00 p.m. and on February 3 from 9:00 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc 89–217 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Billings Area Irrigation Projects Annual Operation and Maintenance Charges; Blackfeet Agency, et al.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Billings Area Irrigation Projects annual operation and maintenance charges.

SUMMARY: The annual operation and maintenance charges for the following Billings Area Irrigation Projects are:

Blackfeet Irrigation Project, Blackfeet Agency	$7.50
Fort Belknap Irrigation Project, Fort Belknap Agency:	
Trust Lands	$6.25
Fee Lands	$12.50
Fort Peck Irrigation Project, Fort Peck Agency	$13.30

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. These operation and maintenance charges will remain in effect until the Billings Area Director has replaced these rates with another announcement in the **Federal Register.**

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices

Browning, Mt. 59417
Cut Bank, Mt. 59427
Valier, Mt. 59486
Harlem, Mt. 59526
Poplar, Mt. 59255
Wolf Point, Mt. 59201

Bureau of Indian Affairs

Blackfeet Agency, Browning, Mt. 59417
Crow Agency, Crow Agency, Mt. 59022

Newspapers

Glacier Reporter, Browning, Mt. 59417
Harlem News, Harlem, Mt. 59526
Wolf Point Herald, Wolf Point, Mt. 59201

Bureau of Indian Affairs

Fort Belknap Agency, Harlem, Mt. 59526
Fort Peck Agency, Poplar, Mt. 59255

Comments: All comments concerning the operating and maintenance charges for the above mentioned irrigation projects must be in writing and addressed to their respective Superintendent of the irrigation project in question before the close of business on February 10, 1989.

Appeal Process: Chapter 25, Part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be received by the Billings Area Director before the close of business on February 10, 1989.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, by the Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual Chapter 3, Part 230, (3.1 & 3.2)).

Norris M. Cole,

Acting Billings Area Director.

[FR Doc. 89–282 Filed 1–5–89; 8:45 am]

BILLING CODE 4310–02–M

Increase to the Operation and Maintenance Charges to the Crow Irrigation Project; Crow Agency, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Increase to the operation and maintenance charges at the Crow Irrigation Project.

SUMMARY: With the exception of Two Leggin Water Users Association Operation and Maintenance (O&M); Two Leggin Drainage Association O&M; and Bozeman Trail Ditch O&M, this notice sets forth that the Crow Irrigation Project is increasing the annual O&M charges from $10.50 to $10.60 per assessable acre beginning CALENDAR YEAR 1989.

All irrigation units within the Little Big Horn Drainage System [Reno, Lodge Grass #1, Lodge Grass #2, Upper Little Horn & Forty Mile] will be assessed the annual operation and maintenance charges plus an additional 30 cents for Willow Creek Reservoir storage fees.

Annual Operation and Maintenance charges for:

Two Leggins Water Users Association O&M	$5.50/acre
Two Leggins Drainage Association O&M	$2.00/acre
Bozeman Trail Ditch O&M	$2.20/acre

Public Meetings: On March 29, 1988, and April 4, 1988, public meetings were held with the Big Horn, Lower Little Horn and Upper Little Horn Irrigation Districts to discuss the operation and maintenence rate increase.

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. These operation and maintenance charges will remain in effect until the Billings Area Director has replaced these rates with another announcement in the **Federal Register.**

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessable lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices

Crow Agency, Mt. 59002, Hardin, Mt. 59034, Lodge Grass, Mt. 59050

Newspapers

Hardin Herald, Hardin, Mt. 59034

U.S. Post Offices

St. Xavier, Mt. 59057
Fort Smith, Mt. 59035
Wyola, Mt. 59089
Pryor, Mt. 59066

Bureau of Indian Affairs

Crow Agency, Crow Agency, Montana

Comments: All comments concerning this increase must be in writing and received by the Superintendent of the Crow Agency, Crow Agency, Montana 59022 before the close of business on February 10, 1989.

Appeal Process: Chapter 25, Part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be received by Billings Area Director before the close of business of February 10, 1989.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, by the Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual Chapter 3, Part 230 (3.1 & 3.2)).

Norris M. Cole,

Acting Billings Area Director.

[FR Doc. 89-261 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-02-M

Final Notice of Operation and Maintenance Rates; Flathead Indian Irrigation Project, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice of operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Flathead Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: This public notice will become effective January 6, 1989, and remain in effect until changed by further notice.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, telephone FTS 429-6702; commercial (503) 231-6702.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1(e) of Part 171, Subchapter H, Chapter I, Title 25 of the Code of Federal Regulations, which provides for the area Director to fix and announce the rates for operation and maintenance assessments and related information on the Flathead Indian Irrigation Project for calendar year 1989 and subsequent years.

SUPPLEMENTARY INFORMATION: On October 5, 1988, the Bureau published notice of proposed operation and maintenance rates for 1989. 53 FR 39153. The notice provided opportunity to comment before a final rate is published. Instead of filing comments on the proposed rates the Flathead Joint Board of Control (JBC) filed a "notice of appeal" dated November 3, 1989, from the proposed rate under 25 CFR Part 2. By letter dated November 23, 1988, the Bureau notified the JBC that the arguments and objections set forth in the JBC's "appeal" would be considered as comments for the purpose of determining a final rate. No other comments were received.

The proposed operation and maintenance charges of 1988 were published in the **Federal Register** on June 11, 1987. As a result of comments from the Flathead Joint Board of Control objecting to the proposed rate of $14.07 per/acre, the rates were reviewed by a special review committee appointed by the Area Director. The rate of $13.60 recommended by the Review Committee was established by the Area Director on July 27, 1987, but never published as a final notice in the **Federal Register.** The $13.60 rate was appealed by the JBC to the Assistant Secretary for Indian Affairs. The matter has been referred to the Interior Board of Indian Appeals, and at the present time no decision has been rendered.

The JBC raised four issues in its comments on the proposed 1989 operation and maintenance assessment. These comments were considered in arriving at the final rate.

First, the JBC argued that the operation and maintenance rate should be set at $13.89. The Board stated that under Montana state law it is required to transmit a list of landowners in the irrigation districts, along with the assesment rate, to the County Treasurer no later than the third Monday in August. Because the BIA proposed assessment was not published until after that time, the Board set a recommended rate of $13.89 based on its assessment of the BIA draft budget proposals. Because of the delay in publishing the assessment proposal beyond the date at which the JBC filed the assessment with the County Treasurer, the BIA agrees to reduce the final rate to the JBC recommendation of $13.89 per acre. The project budget will be adjusted accordingly. However, the Bureau does not agree that the assessment should be expended in accordance with the budget priorities recommended by the JBC.

Second, the JBC objects to the proposed 1.5% per month penalty on unpaid bills. That provision has been deleted from the Final notice. Instead, the notice refers generally to the assessment provisions in federal regulations.

The JBC also commented that the BIA should be "encouraged" to publish notice of proposed assessments locally. The notice is published pursuant to the Department's regulations, 25 CFR 171.1(e). Annual budgets and proposed assessments are also reviewed with the JBC, which is organized under state law to represent the irrigation districts and the irrigators. Therefore, notice and opportunity to comment on the 1989 rate comply with applicable provisions of the regulations.

Finally, the JBC comments generally incorporate the comments made in its appeal of the 1988 rate. Those comments were considered in the reveiw and determination of the 1988 rate, which is now on appeal before the Interior Board of Indian Appeals. No additional response or modification of the 1989 rate is warranted based on those comments.

Due to the extremely dry weather and a shortage of water in the Mission Valley Reservoirs, a special levy of $0.64 per acre for the Mission Valley was proposed by the project management and agreed to by the irrigators for extended operation of the Flathead River irrigation pumps during the 1988 irrigation season.

Flathead Indian Irrigation Project. Annual operation and maintenance assessments.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. Pursuant to 25 CFR 171.1(e), the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1989 and subsequent years until further notice, and hereby fixed as follows:

Basic Assessment. Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $13.89 per acre for the season of 1989 and subsequent years.

Additional Assessment. Due to drought conditions and water shortages, an additional $.64 per acre will be assessed against the Mission Valley Divisions (Mission, Post and Pablo) for pumping costs of operating the Flathead pumps to deliver the .7 acre/feet quota set for the 1988 season.

Payment. The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are biannually billed. The supplemental charges on the trust and non-District lands become due on April 1, 1989 along with the 1989 regular operation and maintenance bill. On lands within an irrigation District, the supplemental charges will be billed immediately.

Interest and Penalty Fees. Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Period Covered. Assessment rates are set for the year 1989 and subsequent years until further notice.

Stanley Speaks,

Portland Area Director.

[FR Doc. 89-202 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-02-M

Proposed Operation and Maintenance Rates; Wapato Indian Irrigation Project, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Wapato Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Interested parties may submit written comments no later than February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, telephone FTS 429-6702; commercial (503) 231-6702.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1989 amount to approximately 6% on the Wapato-Satus Unit, and the Additional Works unit.

Wapato Irrigation Project—General

Administration. The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season. Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes. Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Time for Payment of Water Charges. The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands direct to the project office, remaining unpaid on July 1 following the due date shall be considered delinquent.

No delivery of water will be made without payment or without satisfactory arrangements being made with the Project Engineer. If arrangements are made for delivery of water prior to payment, there will be an interest charge.

Interest and Penalty Fees. Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1984 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report..... $15.00
(2) Requests for Verification of Account Delinquency Status, Per Report..... $10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill..... $10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill..... $10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report..... $10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee..... ($10.00).
(7) Review of subdivision plats..... $10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1989 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1989 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1989 and subsequent years until further notice as follows:

(1) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands..... $27.50
(2) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre..... $3.00
(3) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands..... $28.60

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Stanley Speaks,

Area Director.

[FR Doc. 89-203 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZ-040-09-4320-02]

Safford District Grazing Advisory Board Meeting; Arizona

AGENCY: Safford District, Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, February 3, 1989, 9:00 a.m..

ADDRESS: BLM Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Update on Bureau Vegetative Treatment EIS.
2. District Resource Management Plan (RMP) Update.
3. BLM management update.
4. Business from the floor.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:000 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 p.m., Thursday, February 2, 1989.

Summary minutes of the Board meeting will be maintained in the

District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: December 22, 1988.

Frank Rowley,

Acting District Manager.

[FR Doc. 89-206 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-065-09-3110-10-DTNA]

Realty Action; Exchange of Public and Private Lands in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Exchange of public and private lands in Kern County, CA 23082.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Selected lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Section 12, all;
Section 14, all;
Section 22, all;
Section 24, all.

San Bernardino Meridian, California

T. 11 N., R. 10W.,
Section 8, S½;
Section 22, all.

In exchange for these lands, the United States will acquire private land within the designated Desert Tortoise Natural Area in Kern County from landowners of record. As exchange agreements are developed, separate Notices of Realty Action will be published, specifically describing the parcels to be exchanged and the parties involved.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire portions of the non-Federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoises within its range. Continued declines may lead to state or Federal listing of the species as threatened or endangered. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchanges will be on an equal value basis. Full equalization of value will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations, terms and conditions:

1. A reservation of right-of-way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. Rights of way of record.
3. Public easements for ingress and egress.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area, (619) 375-7125. Information relating to these exchanges is available for review at Ridgecrest, California 93555.

DATES: For a period of 45 days from the date of the first publication of this notice interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 29, 1988.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-204 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-04-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 20, 1989.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Unfinished Business
Superintendent's Report
Bicycle Plan Comments
Status of South Hollow Wellfield
Off-road Vehicle Regulations

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Steven H. Lewis,

Deputy Regional Director.

Date: December 28, 1988.

[FR Doc. 89-222 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-70-M

Meeting; Upper Delaware Citizens Advisory Council

AGENCY: National Park Service, Interior.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: January 27, 1989, 7:00 p.m.[1]

Inclement Weather Reschedule Date: February 10, 1988.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 97-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

land and water use in the Upper Delaware region. The agenda for the meeting will surround Administrative business, including bylaws revision, Charter review, and membership.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated:

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-224 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project (1029-0035) Washington, DC 20503, telephone 202-395-7340.

Title: 30 CFR Part 779 Surface Mining Permit Applications—Minimum Requirements for Environmental Resources

OMB Number: 1029-0035

Abstract: Section 507 and 508 of Pub. L. 95-87 require applicants for surface coal mining permits to provide adequate descriptions of the premining environmental resources and cultural, historic, and archeological values existing within the proposed permit area and adjacent areas. This information is used by the regulatory authority to determine whether the applicant can comply with the environmental protection performance standards for surface mining

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Coal Mine Operators

Annual Responses: 2,000

Annual Bureau Hours: 1,230,420

Estimated Completion Time: 615 hours

Bureau clearance officer: Nancy Ann Baka (202) 343—5981.

Date: December 8, 1988.

Jim Fulton,

Chief Division of Regulatory Development.

[FR Doc. 89-263 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[TA-131(b)-13, TA-503(a)-17, and 332-266]

Probable Economic Effect of Providing Duty-Free Treatment for Watches Under the Generalized System of Preferences

AGENCY: International Trade Commission.

ACTION: Amendment to hearing notice and investigation schedule.

SUMMARY: The following changes have been made to the schedule for Inv. Nos. TA-131(b)-13, TA-503(a)-17, and 332-266:

Activity	New scheduled date
Pre-hearing briefs due to the Commission.	Jan. 17, 1989 (COB).
Hearing	Jan. 23, 1989.
Posthearing briefs due to the Commission.	Jan. 30, 1989 (COB).

The original notice of investigation and hearing schedule was published in the **Federal Register** on November 16, 1988 (53 FR 46126). All other schedule dates listed in the original notice remain the same.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Linkins, (202-252-1499), Office of Industries.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: December 30, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-193 Filed 1-5-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-426-428 (Preliminary)]

Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations No. 731-TA-426-428 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Korea, and Taiwan of small business telephone systems and subassemblies thereof,[1] provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.90.10, 8517.90.15, 8517.81.00, 8517.90.30, and 8517.90.40 of the Harmonized Tariff Schedule of the United States (items 682.60, 684.57, 684.58, and 684.59 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 13, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter

[1] For the purposes of these investigations, the term "small business telephone systems and subassemblies thereof" means telephone systems with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, units of such systems, and subassemblies for use principally in such units, including control and switching equipment, circuit cards and modules, and proprietary corded telephone sets and consoles, whether complete or incomplete, assembled or unassembled.

can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on December 28, 1988, by American Telephone & Telegraph Company, Parsippany, NJ, and Comdial Corporation, Charlottesville, VA.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended by 51 FR (Aug. 1988)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on January 18, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202–252–1192) not later than January 13, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before January 23, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than January 26, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: December 30, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–194 Filed 1–5–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent to Perform-Interstate Transportation For Certain Nonmembers, Agway, Inc. et al.

January 3, 1989.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Agway, Inc., 333 Butternut Drive, DeWitt, NY 13214.

(2)

(3) 333 Butternut Drive, DeWitt, NY 13214.

(4) Vincent M. Spadaro, Box 4853, Syracuse, NY 13221.

B. (1) Dairymen, Inc., 10140 Linn Station Road, Louisville, KY 40223.

(2)

(3) Motor Transportation Records Locations: Dairymen, Inc.—Georgia Division, Recreation Road, Box 910, Eatonton, GA 31024; Dairymen, Inc.—Gulf Division, PO Box 667, Route 7, Enon Highway, Franklin, LA 70438; Dairymen,

Inc.—Kyana Divison, PO Box 18610, 3942 Buechel Bank Road, Louisville, KY 40218; Dairymen, Inc.—Southeast Division, 283 Bonham Road, PO Box 1359, Bristol, VA 24203.

(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

C. (1) Tennessee Farmers Cooperative.

(2)P.O. Box 3003, LaVergne, TN 37086.

(3) P.O. Box 3003, LaVergne, TN 37086.

(4) Mr. Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086.

Noreta R. McGee,

Secretary.

[FR Doc. 89-250 Filed 1-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 48 (Amendment No. 9)]

Eastern Central Motor Carriers Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Eastern Central Motor Carriers Association, Inc. (ECMCA) has filed a minor amendment to its ratemaking agreement approved under 49 U.S.C. 10706(b). The Commission has issued a decision proposing to approve the amendment. The amendment would add a new section 5 to Article X ("Publication of Tariffs") of its bylaws to permit ECMCA to enter into joint agency agreements with similar organizations or with motor common carriers of property, including joint tariff publishing arrangements with other publishing agents or common carriers of property.

Copies of ECMCA's approved agreement and the amendment are available for public inspection and copying at the Public Docket Room (Room 1227) of the Commission in Washington, DC, and from ECMCA's representatives: Joseph E. Durbin, P.O. Box 4540, Akron, OH 44310, and John W. McFadden, Jr., Suite 1001, 1600 Wilson Boulevard, Arlington, VA 22209.

DATES: Comments from interested persons are due February 6, 1989. Replies are due 15 days thereafter. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a final decision.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 48 should be sent to: Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicant's representatives.

FOR FURTHER INFORMATION CONTACT: Jane Udovic (202) 275-7982 or Richard Felder (202) 275-7271 (TDD for hearing impaired: (202) 275-1729.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, or call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359 [Assistance for the impaired is available through TDD services (202) 275-1721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553. Decided: December 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-249 Filed 1-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 262X)]

CSX Transportation, Inc.; Abandonment Exemption at Park, in Polk County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 2.46 miles of rail line in Polk County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 5, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27.( )(2) must be filed by January 17, 1989, petitions to stay must be filed by January 23, 1989, and petitions for reconsideration must be filed by January 31, 1989. Requests for a public use condition must be filed by January 17, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 262X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired, (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: December 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-248 Filed 1-5-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation For Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1989

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This announcement (1) gives notice of a future Solicitation for Grant Application (SGA) to be issued on or about February 3, 1989 for Job Training Partnership Act Title IV, Part C (JTPA IVC) funds and, (2) describes changes in the requirements of this SGA for Program Year 1989 (PY 1989), including a discussion of the role State Employment Security Agencies will play in the program.

DATE: An application package and instructions for completion will be available for issuance on or about February 3, 1989. The closing date for receipt of a completed application in response to the SGA to be issued will be no earlier than April 14, 1989.

ADDRESS: When available during the first week of February, a copy of the application package and instructions will be mailed to all State entities which presently administer JTPA Title IVC grants. Other parties may obain a copy of the SGA by written request only, including two self-addressed mailing labels from: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Melvin Goldberg.

FOR FURTHER INFORMATION CONTACT: James Rude, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue, NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523–9110.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor announces new provisions to be included in an SGA for JTPA Title IVC funding for PY 1989.

Publication of the SGA For JTPA Title IVC

The SGA for PY 1989, to be published during or before the first week of February 1989, will provide new and significant changes in the programmatic design of Title IVC. This announcement serves to provide applicants with a description of the new features so that they have adequate opportunity to consider and plan effective program designs by the submittal deadline.

Emphasis To Be Placed On The Hardest-To-Employ Target Groups

During Program Year 1989, JTPA Title IVC will place an emphasis on providing employment and training services to special disabled, Vietnam theater and minority veterans. Among veterans, these groups have both the highest incidence of unemployment and experience long periods of unemployment between jobs.

Role of the Disabled Veterans Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) Program

Staff as a result of new legislation established in Public Laws 100–323 and 100–689, greater coordination is now required between State Employment Security Agency staff and Title IVC programs. The duties of DVOP staff have been revised accordingly to require that followup activities and case management services be provided to veterans who participate in Federally-funded programs. Furthermore, because Title IVC monies are relatively small vis-a-vis other JTPC funds, it is necessary to maximize the use of these modest resources and not duplicate other veteran employment and training services such as those provided by DVOP and LVER personnel. DVOP and LVER functions will be linked to all IVC programs in PY 1989. A copy of a memorandum of understanding (MOU) between the applicant and the State Employment Security Agency (SESA) must accompany all applications for funding except in cases where the SESA will administer the program. The MOU must provide that DVOP specialists and LVERs will be responsible for the intake and placement activities and also provide case management and followup services to JTPA IVC participants after they have become employed. In cases where the SESA will administer the program, DVOPs and LVERs will be required to perform the services outlined above for JTPA IVC applicants.

Emphasis On Training Activities

Veterans can only be enrolled in JTPA Title IVC programs after they have been assessed by a DVOP or LVER and have been determined to be "not job ready." "Not job ready" means that the veteran applicants are encumbered with barriers which prevent their access to the kind of employment they may require in order to become economically self-sufficient. Before enrolling a veteran in a Title IVC activity, it must be determined that there are no other available JTPA activities which may be better suited to serve the applicant. For example, if the veteran is recently dislocated from the work force, the staff and resources of a JTPA Title III activity may be more appropriate to meet the veteran's immediate needs.

Program designs which promote classroom and on-the-job training are encouraged. Although the costs incurred to train and place participants are higher, classroom training has traditionally provided unemployed veterans with the highest average placement wages. Stand alone job search assistance activities provide, on average, the lowest average starting wages and retention rates and, therefore, are not encouraged. Direct placement activities will be funded only in exceptional instances where a DVOP specialist or a LVER is not available to provide such assistance. Assessment of the veteran's barriers as well as his/her vocational interests and abilities is encouraged. Prior to prescribing specific training, program providers should undertake adequate assessment to ensure that the participant has the ability to successfully complete training and that the vocational training being provided:

- Is appropriate to the veteran's vocational interests and/or work history;
- Pays, on average, a wage which is adequate to meet the veteran's acknowledged economic needs; and
- Is an occupation in demand in the local labor market.

Programmatic Goals

Each grant application must target services to special disabled, Vietnam theater, and minority veterans to the extent that at least 75 percent of the participants served will be in one or more of these three categories. It is anticipated that the cost per participant and cost per placement averages will be higher in order to provide the interventions required to successfully serve these veterans. In training the hard-to-place or "not job ready" veteran, quality service and outcome, and not large numbers, will be emphasized.

Match

As in previous program years, applicants are required to augment the amount of requested Title IVC funds with a 100 percent match from other resources. It has been found the exemplary IVC programs commonly provide "hard", or real dollar, matches in their programs. This type of match will be strongly encouraged.

Administrative Issues

Efforts are being made to simplify application procedures over those of previous years. Length of application and budget information are two areas under review for possible simplification.

Presently JTPA IVC grants are awarded on a staggered schedule with only a few starting at the beginning of the normal Program Year cycle, i.e., July 1. So that program providers can better coordinate with the activities of their local Private Industry Councils and with vocational education services which traditionally begin classes in September, consideration will be given to negotiating different start dates from those that are currently in place.

Signed at Washington, DC, this 23rd day of December 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89–258 Filed 1–5–89; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decision being superseded.

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Vermont:	
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Virginia:	
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Virgin Islands:	
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Washington:	
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of January 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-274 Filed 1-5-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Trade Adjustment Assistance for Workers; Supplemental Operation Instructions for Implementing the 1988 Amendments to Trade Adjustment Assistance for Workers Program; Correction

Change 1 to GAL 7-88 and Change 1 to TEIN 6-88 were published in the **Federal Register** on December 21, 1988, at 53 FR 51522. The dates on both Changes were omitted in the publication, and that omission is corrected with this notice. The date for both Changes 1 is December 9, 1988.

Dated: December 30, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-257 Filed 1-5-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ECONOMIC COMMISSION

Meeting

AGENCY: National Economic Commission.

ACTION: Notice of Commission meetings.

SUMMARY: The National Economic Commission ("the Commission") will hold meetings on January 17, 18, 19, 31, and February 1 and 2, 1989. The commission was established by section

2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, enacted December 22, 1987.

DATE, TIME AND PLACE: January 17, 1989: 9:00 a.m.—2:30 p.m.; January 18, 1989: 9:00 a.m.—5:30 p.m.; January 19, 1989: 9:00–4:00 p.m.; January 31, 1989: 11:00 a.m.–5:30 p.m.; February 1, 1989: 9:00 a.m.–5:30 p.m.; and February 2, 1989: 9:00 a.m. to 4:30 p.m. All meetings will be held in Room 562, Dirksen Senate Office Building, Washington, DC.

Agenda: The agenda for these meetings will be announced as soon as practicable before the meetings.

Closed Meeting: These meetings will be closed in order to avoid disclosure of information the premature disclosure of which would be likely to significantly frustrate the implementation of the Commission's mandate within section 552b(c)(9), United States Code.

FOR ADDITIONAL INFORMATION: Contact Jim Hildreth at 703/425–8986, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 89–338 Filed 1–5–89; 8:45 am]

BILLING CODE 6820–45–M

NATIONAL SCIENCE FOUNDATION

DOE NSF Nuclear Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: January 27–28, 1989.

Place: National Science Foundation, Room 540, 1800 "G" St., NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357–7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

Friday, Jan 2

9:00–12:30

—NSF Budgets and Programs
—DOE Budgets and Programs
—NSF and DOE Responses to NSAC Theory Report
—Report on HEPAP Planning Meeting
—Report on KAON Subcommittee

2:00–6:00 p.m.

—Report from Instrumentation Subcommittee
—New Long Range Planning Preparations

Saturday, Jan 28

8:30–3:30

—Discussion of Long Range Planning
—Presentation and Discussion of Major Instrumentation Proposals
—Women and Minorities in Nuclear Science
—Other Business

3:30

—Adjourn

M. Rebecca Winkler,

Committee Management Officer.

January 3, 1989.

[FR Doc. 89–198 Filed 1–5–89; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunites in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dates: January 25, 26, 27, 1989.

Times/Rooms:

January 25: Subcommittee on Women 9:00 a.m.–12:00 p.m., Room 540

January 22: Full Committee Meeting 1:30 p.m.–420 p.m., Room 540

January 26: Full Committee Meeting 9:00 a.m.–12:00 p.m., Room 540

January 26: Subcommitte on the Disabled 1:30 p.m.–4:30 p.m., Room 540

January 27: Subcommittee on Minorities 9:00 a.m.–12:00 p.m., Room 540

Type of Meeting: Open.

Contact: Mary M. Kohlerman. Executive Secretary of the CEOSE, National Science Foundation, Room 635. Telephone Number: 202–357–7066.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, profesisonal and technical fields.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Agenda:: To review progress by the subcommittees, become familiar with successful intervention programs, and to meet with the director and other NSF staff.

January 3, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–199 Filed 1–5–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 12–14, 1989, in Room P–114, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on December 1, 1988.

Thursday, January 12, 1989

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:45 a.m.: Standard Design Certification and combined Licenses for Nuclear Power Plants (Open)—Review and report on proposed 10 CFR Part 52 regarding Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants.

11:00 a.m.–12:00 Noon: NRC Quantitative Safety Goals (Open)—Discuss Proposed ACRS report to NRC regarding the proposed implementation plan for the NRC Quantitative Safety Goals.

1:00 p.m.–2:00 p.m.: Meeting with NRC Commissioner James R. Curtiss (Open)—Discuss matters of interest regarding NRC/ACRS activities.

2:15 p.m.–4:15 p.m.: Generic Issue 43, Air Systems Reliability (Open)—Review and report on proposed resolution of Generic Issue 43, Air Systems Reliability.

4:15 p.m.–5:15 p.m.: Preparation of ACRS report to NRC (Open)—Discuss proposed ACRS report to NRC regarding proposed NRC Code Scaling Application and Uncertainty Evaluation Methodology for application to ECCS evaluation.

5:15 p.m.–5:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

5:45 p.m.–6:00 p.m.: Nuclear Safety Research Program (Open)—Discuss scope and nature of ACRS annual report

to Congress on the NRC Research Program.

6:00 p.m.–6:30 p.m.: Appointment of ACRS Members (Open/Closed)—Discuss qualifications of candidates proposed for consideration as ACRS members and areas of expertise needed to conduct Committee business.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, January 13, 1989

8:30 a.m.–9:30 a.m.: Fitness for Duty (Open)—Briefing by NRC staff regarding status of proposed fitness for duty rule.

9:30 a.m.–12:00 Noon: Containment Systems (Open)—Review and comment regarding proposed BWR Mark I containment performance and improvements.

1:00 p.m.–2:00 p.m.: Accident Management (Open)—Briefing by NRC staff regarding proposed generic letter on accident management.

2:00 p.m.–3:00 p.m.: NRC Quantitative Safety Goals (Open)—Discuss proposed ACRS report to NRC regarding the NRC staff proposed implementation plan for the NRC quantitative safety goals.

3:15 p.m.–6:00 p.m.: Preparation of ACRS Reports to NRC (Open)—Discuss proposed reports to NRC regarding the preapplication review and approval for the Sodium Advanced Fast Reactor, Standard Design Certification and Combined Licenses for Nuclear Power Plants, and Emergency Core Cooling Systems CSAU methodolgy.

Saturday, January 14, 1989

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to NRC (Open)—Discuss proposed reports to NRC regarding items considered during this meeting.

1:00 p.m.–2:30 p.m.: ACRS Subcommittee Activities (Open/Closed)—Hear and discuss status of assigned ACRS subcommittees regarding safety-related issues, including nuclear power plant valve testing and reliability, safeguards and security at nuclear power plants, and regional programs (Region IV).

Portions of this session will be closed as required to discuss physical security information applicable to the matters being considered and information provided in confidence by a foreign source.

2:30 p.m.–3:00 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), to discuss physical security information applicable to the matters being considered (5 U.S.C. 552b(c)(3)) and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allowed can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: December 30, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–240 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; Issuance of Final Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Final Decision concerning a request filed pursuant to 10 CFR 2.206 by Massachusetts Governor Michael S. Dukakis and Attorney General James M. Shannon that requested that the Director of the Office of Nuclear Reactor Regulation (NRR) institute a proceeding to modify, suspend, or revoke the operating license held by Boston Edison Company (BECo, the licensee) for its Pilgrim Nuclear Power Station (Pilgrim).

On May 27, 1988, the Director of the Office of Nuclear Reactor Regulation issued an "Interim Director's Decision under 10 CFR 2.206" concluding that a portion of the request concerning the need for a probabilistic risk assessment was denied. In that decision, the Director stated the portion of the Petition covering management and emergency preparedness would be addressed in a subsequent response.

The second response on October 6, 1988, culminated in a "Second Interim Decision under 10 CFR 2.206" concerning numerous deficiencies in licensee management, and for reasons explained in the Decision, that portion of the Petition was denied.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition, with respect to the remaining issue, deficiencies in emergency preparedness, should be denied. The reasons for this Decision are explained in the "Final Director's Decision Under 10 CFR 2.206, DD–88–21," which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 20360.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 29th day of December 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 89–239 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

[NUREG-0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) has published Revision 2 to SRP Section 5.2.2, "Overpressure Protection" and Revision 1 to Branch Technical Position RSB 5–2, "Overpressure Protection of Pressurized Water Reactors While Operating At Low Temperatures," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

Revision 2 to SRP Section 5.2.2 and Revision 1 to its associated Branch Technical Position RSB 5–2 incorporate a definition of the phrase "at low temperatures" that is used in the requirement for a low temperature overpressure protection (LTOP) system. The phrase is defined by adding a new Branch Position B.2, which specifies the enable temperature below which the LTOP system must be operable. Fracture considerations are the basis for establishing the enable temperature. This revision provides relief for those plants whose licensees are interpreting the phrase "at low temperatures" in an overconservative way. They protect the pressure-temperature (P-T) limits over the entire temperature range from startup to the temperature corresponding to the safety valve setpoint pressure (about 2400 psig). When this is done with a fixed LTOP setpoint, the operating window between the LTOP setpoint pressure and saturation pressure at the LTOP enable temperature becomes narrow, and heatup and cooldown become painstakingly slow.

Constraint on operating flexibility will be worse when licensees implement Regulatory Guide 1.99, Revision 2, as the basis for calculating the effects of radiation embrittlement on P-T limits, because the effects are greater than predicted by Revision 1 to R.G. 1.99. This situation was recognized when the Regulatory Analysis for Revision 2 was prepared, and the proposed revision of SRP 5.2.2 and Branch Technical Position RSB 5–2 was included in the CRGR package to provide relief to the extent possible consistent with fracture-prevention requirements.

The revised SRP sections are effective immediately. A copy is expected to be available in the Public Document Room within two weeks. Copies of the revised SRP Sections or of the complete Standard Review Plan, NUREG–0800, Accession No. PD–81–920199, are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650.

Dated at Rockville, Maryland this 30th day of December 1988.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Chief Inspection and Licensing Program Branch, Program Management, Policy Development and Analysis Staff, Office of Reactor Regulation.

[FR Doc. 89–238 Filed 1–5–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-1 & 50-444-OL-1]

Onsite Emergency Planning and Safety Issues; Public Service Co. of New Hampshire, et al., (Seabrook Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for the onsite emergency planning and safety issues phase of this operating license proceeding. As reconstituted, the Appeal Board will consist of the following members:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: December 30, 1988.

[FR Doc. 89–241 Filed 1–5–89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Canada Free-Trade Agreement; Confirmation of Date of Entry into Force

AGENCY: Office of the United States Trade Representative.

ACTION: Confirmation of date of entry into force of the United States-Canada Free-Trade Agreement.

The United States-Canada Free-Trade Agreement ("the Agreement"), which was approved and implemented in the Pub. L. 100–449, the "United States—Canada Free-Trade Implementation Act," 102 Stat. 1851 ("the Act"), entered into force on January 1, 1989.

SUPPLEMENTARY INFORMATION: Over the past several weeks, a number of federal agencies have published notices in the **Federal Register** of regulations implementing the Agreement and the Act. The **Federal Register** notices stated that the regulations would take effect upon the date of entry into force of the Agreement and that the United States Trade Representative would provide confirmation in the **Federal Register** of that date.

FOR FURTHER INFORMATION CONTACT: Charles E. Roh, Associate General Counsel, or Kenneth P. Freiberg, Associate General Counsel, Office of the General Counsel, at (202) 395–3432.

Judith H. Bellow,

General Counsel.

[FR Doc. 89–294 Filed 1–5–89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 30, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46040

Date Filed: December 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 24, 1989.

Description: Application of American Pacific Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket No.: 46047

Date Filed: December 30, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 27, 1989.

Description: Application of JayHawk Air, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests authority to

engage in interstate and overseas scheduled air transportation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-270 Filed 1-5-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[RS&I-Ap-No. 1051]

Long Island Rail Road; Public Hearing

The Long Island Rail Road has petitioned the Federal Railroad Administration (FRA) for relief from certain requirements of § 236.587 of the Rules, Standards and Instructions (RS&I) (49 CFR 236.587). This proceeding is identified as FRA's RS&I Application Number 1051.

In this proceeding, the LIRR is seeking a temporary exemption at certain locations from the requirement of § 236.587(b) that prescribes that if the locomotive cab signal devices are cut out between the initial terminal and equipped territory, a departure test shall be made prior to entering equipped territory, a temporary exemption at certain locations from the requirement of § 236.587(d)(1) that prescribes that whoever performs the departure test shall certify in writing that such test was properly performed; and a temporary exemption from the requirement of § 236.587 to the extent that where test equipment fails, a departure test not be required.

After examining the carrier's proposal and the available facts, 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 10 a.m. on February 14, 1989, in Room 305-C, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA's Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary 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.

Issued in Washington, DC, on December 27, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-226 Filed 1-5-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket No. LI-88-5]

Long Island Rail Road; Public Hearing

The Long Island Rail Road (LIRR) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with certain requirements of § 229.9(d) of the Railroad Locomotive Safety Standards (49 CFR Part 229) for its fleet of M-1 and M-3 self-propelled transit cars defined as MU locomotives in the standards. This proceeding is identified as FRA's Waiver Petition Docket No. LI-88-5.

In this proceeding, the LIRR is seeking a permanent waiver of compliance with § 229.9(d), which requires that, "A dead locomotive may not continue in use following a calendar day inspection as a controlling locomotive or at the head of a train or locomotive consist." The LIRR requests that it be permitted to operate dead locomotives as controlling locomotives or at the head of a train or locomotive consist, provided they meet the following conditions:

1. Number of dead cars (MU locomotives) in an MU train shall be limited to:

a. 3 dead cars for 12- and 10-car trains.

b. 2 dead cars for 8-car trains.

c. 1 dead car for 6- and 4-car trains.

d. No dead cars for 2-car trains.

2. Cars operated dead will have all tread brake units operative.

3. Cars operated dead will not continue in service beyond the next periodic inspection.

4. Cars operated dead will be operated in compliance with the following conditions:

a. All systems and components on an MU locomotive shall be free of conditions that endanger the safety of the passengers, crew, locomotive or train.

b. A motor or a generator on an MU locomotive may not have any of the following conditions:

i. Be shorted or grounded unless completely isolated from the power supply

ii. Throw solder excessively

iii. Show evidence of coming apart

iv. Have an overheated support bearing.

The LIRR believes that operation of a limited number of dead MU locomotives in an MU train is safe, including the lead car, for the following stated reasons:

1. The trainline control functions which command the train from the controlling locomotive are independent of the traction system. These safety-related trainline functions are confirmed as operational through various tests and inspections.

2. No electrical stress is imposed on a car with the traction system inoperative because it is automatically electrically disconnected.

3. No additional stress is placed on the cars with traction systems operating as the current delivered to the traction system is limited independently on each car, which results only in a reduced rate of acceleration.

4. Analysis shows that under worst-case operating conditions, 70 percent of the cars in a train with operating traction systems will assure that the train can be moved up a grade without stalling. Stalling on a grade could cause abnormal electrical stress on the traction system.

5. Wheel slide control is operative even when the traction system is inoperative.

6. The M-1 and M-3 cars are designed to utilize blended friction and dynamic braking (traction motors switched to operate as generators) in stopping. However, the friction brake system is designed to provide approximately equal braking to that provided by the blended dynamic brake and friction brake. The test data shows that friction brake alone provides stopping distances within specification requirements.

The FRA finds that the LIRR's request for a waiver from § 229.9(d) must also be considered in relationship to other regulations in Part 229; for instance, § 229.9(b) allows a locomotive that develops a non-complying condition en route to continue in service only until either (i) it arrives at the next forward point at which necessary repairs can be made to bring it into compliance, or (ii) the next calendar day inspection. Further, § 229.21(b) (Daily Inspection) requires that any condition that fails to meet any requirement of Part 229 shall be repaired before the locomotive is used.

After examining the carrier's proposals, the FRA has determined that a public hearing is necessary before a final decision is made on this petition.

Accordingly, a public hearing is hearby set for 10 a.m. on February 15, 1989, in Room 305-C, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The issuance of this notice of a public hearing in no way alleviates the LIRR from compliance of the requirements of the Railroad Locomotive Safety Standards as they apply to its M–1 and M–3 MU locomotives.

The hearing will be a nonadversary 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 considered, those persons wishing to make a brief rebuttal statement will be given an 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.

Interested persons are also invited to participate in this proceeding by submitting written views and comments. Communications concerning this proceeding should refer to FRA Waiver Petition Docket No. LI–88–5 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received on or before February 15, 1989, will be considered by the FRA before final action is taken. All comments received will be available for examination both before and after the closing date for comments, during regular working hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC

Issued in Washington, DC on December 22, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–227 Filed 1–5–89; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket No. LI–86–6]

Port Authority Trans-Hudson Corp.; Public Hearing

The Port Authority Trans-Hudson Corporation (PATH) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with certain requirements of § 229.141(a) of the Railroad Locomotive Safety Standards (49 CFR Part 229). This proceeding is identified as FRA Waiver Petition Docket No. LI–86–6.

In this proceeding, PATH, is seeking a permanent waiver of compliance with § 229.141(a), which requires that MU locomotives in trains having a total empty weight of more than 600,000 pounds shall resist a minimum static end load of 800,000 pounds without developing any permanent deformation in any member of the body structure.

The entire fleet of more than 300 MU locomotives owned and operated by PATH are all built to conform to the requirements of § 229.141(b), which requires that MU locomotives in trains having a total empty weight of less than 600,000 pounds shall resist a minimum static end load of 400,000 pounds without developing any permanent deformation in any member of the body structure.

At the present time, PATH is operating trains of seven and eight MU locomotives which have a total empty weight of less than 600,000 pounds, and the MU locomotives in those configurations are in compliance with § 229.141(b). However, PATH proposes to operate nine and ten MU locomotives in trains which will exceed a total empty weight of 600,000 pounds, and the MU locomotives in the proposed configurations will not meet FRA's requirements. It is for this reason that PATH has petitioned the FRA for a waiver of compliance with § 229.141(a).

After examining the carrier's proposals, documentation, and all other available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this petition.

Accordingly, a public hearing is hereby set for 10 a.m. on February 16, 1989, in 305–C, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be a nonadversary 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 considered, those persons wishing to make a brief rebuttal statement will be given an 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.

Issued in Washington, DC on December 22, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–228 Filed 1–5–89; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 30, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0229.

Form Number: 6406.

Type of Review: Revision.

Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.

Description: This form is used by certain employee plans that request a determination letter on an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).

Respondents: Businesses or other for-profit, Small Businesses or organizations.

Estimated Number of Respondents: 70,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—18 hours 39 minutes
Learning about the law or the form—2 hours 40 minutes
Preparing the form—6 hours 49 minutes
Copying, assembling, and sending the form to IRS—1 hours 4 minutes

Estimated Total Recordkeeping/Reporting Burden: 2,044,000 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89–195 Filed 1–5–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 30, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Opinion Survey of Taxpayers Contacted by the IRS Collection Function.
Description: Information gathering for operation and program evaluation: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS Collection Function, to identify possible areas of program improvement, and thereby improve the effectiveness of Collection activities.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89–196 Filed 1–5–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

DATE: December 30, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0197.
Form Number: 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description: IRS needs certain information on the financing and operating of employee benefit plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a) for the related trust as tax exempt.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—31 hours 34 minutes
Learning about the law or the form—3 hours 23 minutes
Preparing the form—6 hours 50 minutes
Copying, assembling, and sending the form to IRS—48 minutes
Estimated Total Recordkeeping/Reporting Burden: 9,315,390 hours
OMB Number: 1545–0260.
Form Number: 706–CE.
Type of Review: Revision.
Title: Certificate of Payment of Foreign Death Tax.
Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—46 minutes
Learning about the law or the form—4 minutes
Preparing the form—25 minutes
Copying, assembling, and sending the form to IRS—28 minutes.
Estimated Total Recordkeeping/Reporting Burden: 3,420 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89–197 Filed 1–5–89; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, January 12, 1989, at 2:30 p.m.
Thursday, January 26, 1989, at 2:30 p.m.
Thursday, February 9, 1989, at 2:30 p.m.
Thursday, February 23, 1989, at 2:30 p.m.
Thursday, March 9, 1989, at 2:30 p.m.
Thursday, March 23, 1989, at 2:30 p.m.

The meetings will be held in Room 300, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of

Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 28, 1988.
By Direction Of The Administrator.

Donald R. Smith,
Acting ADA/Public Affairs.

[FR Doc. 89–180 Filed 1–5–89; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for January 6, 1989.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 6, 1989, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administriaton, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approval Items
2. Implementaton of the Agricultural Credit Act of 1987
   —Final Regulations on Receiverships
   —Final Regulations on Secondary Market
   —Final Regulations on Funding and Assistance Corporation Collateral Issues
   —Final Regulations on Borrower Rights, Effective Interest Rates
3. Proposed Regulations Concerning Prior Approvals and Human Resources Management
4. CEO Compensation Guidelines

Closed Session [1]

5. Institution Requests Concerning CEO Compensation
6. Salary Ranges for the Sixth District
7. Examination and Enforcement Matters
8. Farm Credit Administration Operations
9. Jackson FLB/FLBA, in Receivership

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (2), (4), (6), (8), and (9).

Dated: January 3, 1989.
David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 89–311 Filed 1–4–89; 12:24 pm]
BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, January 3, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the possible closing of an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 –17th Street NW., Washington, DC.

Dated: January 4, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89–331 Filed 1–4–89; 12:24 pm]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 11, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) implementing the Home Equity Loan Consumer Protection Act to require additional disclosures for home equity lines of credit and to place limitations on home equity plans.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: January 4, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89–356 Filed 1–4–89; 3:51 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: Approximately 11 a.m., Wednesday, January 11, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 4, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89–357 Filed 1–4–89; 3:51 pm]
BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, January 12, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meetings.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Charter for Mid-Bronx Community Development Federal Credit Union, Bronx, New York.

RECESS: 11:00 a.m.

TIME AND DATE: 11:30 a.m., Thursday, January 12, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. ADP USERS Guide. Closed pursuant to exemption (2).
3. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89–373 Filed 1–4–89; 3:51 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-8211]

Guidelines for Fishery Management Plans

Correction

In the proposed rule document beginning on page 53031 in the issue of Friday, December 30, 1988, make the following correction:

On page 53036, in the third column, in the file line at the end of the document, "FR Doc. 88-30007" should read "FR Doc. 88-30007a".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological and Communicative Disorders and Stroke; Meeting

Correction

In notice document 88-28347 beginning on page 49794 in the issue of Friday, December 9, 1988, make the following correction:

On page 49794, in the third column, in the third line from the bottom, "Review B" should read "Review A".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Modifications in Speciality Steel Import Relief

Correction

In notice document 88-29943 beginning on page 52897 in the issue of Thursday, December 29, 1988, make the following corrections:

1. On page 52897, in the second column, in the seventh line, "the" should read "to".

2. On the same page, in the same column, in the 33rd line from the bottom, "or" should read "of".

3. On the same page, in the same column, in the fifth line from the bottom,"chromium" was misspelled.

4. On the same page, in the third column, in the paragraph designated "4(a)(xvi)", at the end of the last line, the period should be a semicolon.

5. On page 52898, in the second column, in the 11th line, "7220.20" should read "7222.20".

6. On the same page, in the third column, in the 14th line, "7220.10" should read "7222.10".

7. On page 52899, in the table, in the third column, the 15th entry, which now reads, "355,620" should read "202,304".

8. On the same page, below the table, in the third column, at the end of the first line, "7117.22.50" should read "7217.22.50".

BILLING CODE 1505-01-D

federal register

Friday
January 6, 1989

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

Deep Seabed Mining; Final Regulations for Commercial Recovery and Revision of Regulations for Exploration; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

[Docket No. 50712-8052]

Deep Seabed Mining; Final Regulations for Commercial Recovery and Revision of Regulations for Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act) authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue, to eligible United States citizen applicants, licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits. These rules set forth the procedures and substantive requirements according to the terms of the Act pursuant to which U.S. citizens may apply for and NOAA will issue commercial recovery permits. Through the Act and these rules the United States exercises a freedom of the high seas under accepted principles of international law.

DATES: These rules will become effective February 6, 1989.

ADDRESSES: Inquiries and submissions should be mailed to:
Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: James P. Lawless, Chief, Ocean Minerals and Energy Division (202) 673-5121, or John W. Padan, Program Manager, Deep Seabed Mining (202) 673-5117, at the above address.

SUPPLEMENTARY INFORMATION: During 1980 and 1981, NOAA engaged in its first rulemaking to implement the Act and issued regulations on September 15, 1981, pertaining to exploration by U.S. citizens for deep seabed hard mineral resources (15 CFR Part 970).

NOAA now issues regulations to implement the Act with respect to commercial recovery. These regulations are intended to complete the next phase of implementation and thus provide a basis for major long-term planning and decisions by current and potential operators.

NOAA recognizes that developments such as changes in technology, the availability of new environmental data and results of monitoring, and the potential future national need for manganese, may necessitate future changes in the regulations adopted pursuant to this rulemaking. Consequently, the regulations are designed to encourage the development of technology necessary to recover deep seabed manganese nodules by providing a clear regime now, for corporate planning purposes, while allowing for changes in regulations, if needed, and deferring detailed decisions on permit-specific terms, conditions and restrictions (TCRs) until the time of permit issuance. This two stage process will facilitate planning, by enabling planners to know now the general levels of efforts that will be required, and their approximate costs, without precluding the opportunity for future research results and improvements in state of the art to be reflected in the TCRs. The regulations also recognize the need for flexibility in order to promote the development of deep seabed mining techniques and systems in a manner compatible with the requirements of the Act and regulations.

Structure of the Regulations

The regulations are structured to present procedures and requirements in the approximate chronological order in which they will be encountered in the application process. The regulations begin by setting out their underlying purpose and the basic legal premises established by the Act, as well as the definitions applicable to the rules. The steps that the applicant and NOAA will follow are set forth mostly in Subparts B through D while the more substantive discussion of major issues that arise during the course of issuing and operating under a permit are found primarily in Subparts E-G. Miscellaneous, procedural and enforcement provisions are in Subparts H-J.

Public Comment Opportunities

NOAA published an Advance Notice of Proposed Rulemaking (ANPR) on commercial recovery regulations on December 28, 1982, 47 FR 57903, soliciting early participation by interested parties in the rulemaking. After receiving comments from the public, NOAA held workshops in June 1983 for Federal officials interested in manganese retention and in July 1983 on coordination of Federal responsibilities affecting onshore activities. NOAA produced an issue paper and held a public workshop on marine environmental issues in September 1983 to gather further input and technical expertise to assist in the development of these regulations. Another discussion paper on other deep seabed mining issues, taking into account comments received in response to the ANPR, was also circulated for public comment during the same period.

In developing these regulations NOAA has made a continuing effort to provide for and encourage public participation.

On July 25, 1986, NOAA published in the **Federal Register** and distributed for public comment a Notice of Proposed Rulemaking (51 FR 26794). Copies of the proposed rules were mailed to a wide variety of interested groups and individuals on the NOAA deep seabed mining mailing list. Notices of public hearings held in conjunction with this rulemaking were also published in local newspapers serving the public in the regions where the hearings were located. Five public hearings were held relating to this rulemaking: one each on August 26 in Washington, DC and September 9 in San Francisco, and two in Honolulu and one in Hilo, Hawaii, on September 11. The original 90 day public comment period was extended an additional 30 days through November 24, 1986, in response to a request from several concerned parties. Comments on the proposed regulations were received from twenty-six sources, including industry, State representatives, environmental groups, other Federal agencies and interested citizens. Copies of the comments and transcripts of the public hearings are available for review at the above address.

Comments on several of the issues led NOAA to recognize that the best approach might be to propose regulations different than originally proposed. Accordingly, on September 14, 1987, NOAA published in the **Federal Register** and distributed for public comment a supplemental proposed rule (52 FR 34748). Again, copies of the supplement were mailed to a wide variety of interested groups and individuals on the NOAA deep seabed mining mailing list. In order to provide additional time for potential commenters, the original 45 day comment period was extended an additional 15 days to November 13, 1987.

The supplemental proposal consisted of three environmental issues and one issue involving the appropriate mechanism for handling antitrust information. First, several comments on the original proposal revealed a concern

over what was perceived to be a dearth of environmental guidelines, particularly given the infancy of the industry and technology and a relative lack of knowledge of the deep sea environment. Accordingly, NOAA proposed to establish criteria to be considered for the determination of significant adverse environmental effects, patterning the approach after the Ocean Discharge Criteria of the Clean Water Act regulations (40 CFR Part 125, Subpart M). Second, in lieu of specifying what would be Best Available Technologies (BAT), NOAA proposed to require an applicant to demonstrate his use of BAT and to submit a mitigation plan for a potential need to deal with an environmental problem triggered by the discharge of mining wastes onto the ocean's surface. Third, the at-sea monitoring requirements were slightly refined to require the monitoring of benthic impact through the study of two types of areas: An Impact Reference Area; and an interim Preservational Reference Area.

The Antitrust issue involved the identification of the Department of Justice (DOJ) comments on the original issue of whether or not NOAA should require applicants to submit to NOAA information for subsequent review by DOJ and the Federal Trade Commission.

All four issues are discussed further, below.

Comments on the supplemental proposed rule were received from eighteen sources, including industry, State representatives, environmental groups, a trade organization, interested citizens, and other Federal agencies.

Summary of Comments and Responses

The comments submitted in response to the Notice of Proposed Rulemaking and supplemental proposed rule were useful in assisting NOAA in its consideration of the issues raised in implementing its responsibilities under the Act. A number of the comments provided improvements and refinements to the general approach proposed by NOAA, while others were the basis for clarification of specific provisions. The following summarizes the major comments and NOAA's responses.

General Comments

Timing.—The issue of NOAA's early promulgation of commercial regulations was the subject of many comments. Most commenters were in favor of the early establishment of a regulatory regime that contains sufficient flexibility to accommodate conditions and unforeseen problems that may occur when commercial mining actually begins. One specific comment stated that knowing the rules in advance is useful to industry for planning purposes in preparing to make the transition from the exploration phase to commercial recovery. One commenter that was against early promulgation felt that the regulations were premature and unnecessary at this time because of industry's diminished interest in mining brought about by the depressed metals market. Another felt that there may be changes in technology, mine sites, consortia composition, Law of the Sea structure and international interests which may affect the regulations in the future. NOAA feels that promulgation of the basic commercial regulations is the best course of action. This decision takes account of the comments received and recognizes the usefulness of early notice to operators of the information required for permit evaluation and issuance, so that they can continue with their orderly planning for the development of these resources. It also takes account of long-range national interests of the United States in access to deep seabed hard minerals. In deciding to issue these regulations now, NOAA recognizes that the regulations can be revised as future technological or other needs arise, and that the structure under the Act allows for addressing key issues in more detail as appropriate in TCRs at the time of issuing each permit.

Approach.—Five commenters, representing a wide spectrum of interest groups, were supportive of NOAA's approach to the implementation of the commercial recovery aspects of the Act. Three of the commenters went on to specify aspects of the NOAA approach they believed to be especially appropriate. One dealt with the manner in which Coastal Zone Management Act Federal consistency requirements were reflected in the proposed rules. A second commenter thought the proposed rules were derived from the Act, in a clear and specific manner. Finally, one commenter opined that the proposed rules generally meet the need for encouraging development (of the resource) consistent with the Act.

Subpart A—General

Definitions.—The two commenters who addressed the definitions supported NOAA's adding the definition of "significant adverse environmental effect," "irreparable harm" and "environment." One, however, suggested that "environment" should be expanded to include the coastal zone. While the present definition might conceivably include portions of the coastal zone (i.e., affected transportation corridors), NOAA believes that including the entire coastal zone is too broad. The Act as implemented through these regulations applies only to commercial recovery activities, and such a broad definition of "environment" would extend beyond the statutory definition of "commercial recovery." Although the National Environmental Policy Act (NEPA) requires NOAA to consider other effects in its EIS, NOAA's authority under the Act to regulate activities in the coastal zone is limited. Rather, regulatory authority there rests essentially with the States or with other Federal agencies such as EPA and the Corps of Engineers.

This commenter also pointed out that including the limiting term "discharge" in the definitions of "irreparable harm" and "significant adverse environmental effect" is too narrow. NOAA agrees. NOAA's approach was based on the conclusion that the environmental perturbations from commercial recovery activities would be consistent with "discharges" as covered by EPA's NPDES permits, although they may fall outside that term as defined by EPA and should not be so limited. The term "discharge" therefore has been dropped from NOAA's definitions.

Another commenter noted that the proposed definition of "significant adverse environmental effect" itself included the term "significant," and recommended that this term be defined in accordance with the NOAA Directives Manual for implementing NEPA. NOAA believes it is inappropriate in this case to use a definition from its NEPA procedures, since those are intended to provide a standard as to when the agency should prepare an EIS. The Act already includes the policy determination that an EIS should be prepared on the issuance of each permit. The term "significant" as used in the Act and the above definition is intended for a different standard, i.e., on whether to issue or require changes to a permit. The purpose for including a qualifying term was to clarify that the effect had to be important, but NOAA acknowledges the potential redundancy in using a term within its own definition. Therefore, the intent of the definition is now expressed by the word "important."

One commenter suggested that the clause "which is unreasonable in relation to the benefit derived from the discharge" be deleted from the third part of the definition of "significant adverse environmental effect," because she believed the level of impact should be determined before, not after, project benefits are weighed. NOAA is willing to delete the specified phrase. However, we believe that the third part of the

definition needs qualifying language to make it compatible with the overall definition, which is intended to address "significant" effects. The term "important" thus is used here as well.

Subpart B—Applications

Recognition of Previous Activities.—Several commenters submitted views relating to the need for an applicant to receive proper credit for previous activities in the context of an application for a commercial recovery permit. NOAA acknowledges this as a valid concept. NOAA had, in fact, previously realized that information originally submitted with an operator's exploration license application was likely also to relate to the Act's information requirements for a commercial recovery permit. NOAA noted this point in the proposed rules and so provided in proposed § 971.200(e). It also is clear that information submitted in a licensee's annual reports to NOAA would be relevant to subsequent permit application requirements.

These considerations mean that an operator under an exploration license, who applies for a commercial recovery permit, is likely to have to submit less new information than a transferee who is a new entity. Although, in accordance with the Act, each applicant must meet a single set of standards, in practical terms the prior operator will have more information and a "track record" on file with NOAA that could be relied upon for certain determinations required for issuing a commercial recovery permit. NOAA has further emphasized the above concept by expanding §§ 971.200 (c) and (e).

Statement of Financial Resources.—One commenter proposed that the regulations contain the added requirement that issuance of a permit is contingent upon the applicant actually obtaining the financial resources. NOAA has determined that this requirement would be inappropriate for this particular portion of the regulations. Rather, NOAA believes that the provisions on diligence after permit issuance adequately address the issue raised by this comment, i.e., that the operator proceed with his proposed activities.

A commenter also proposed that the regulations call for an applicant to demonstrate adequate financial resources to compensate injured parties or to cover the cost of clean up or restoration of natural resources. NOAA has concluded that its authority under the Act pertaining to an applicant's financial resources does not go so far as requiring resources for such compensation payments. However, should NOAA in the future determine that a reclamation TCR would be appropriate, then the financial implications of such a requirement could be included in NOAA's analysis of an applicant's financial capability.

A commenter also suggested that more detailed information be provided by the applicant, including a statement of financing feasibility from financing entities. On the other hand, several commenters indicated that, at the time of an application, an applicant cannot obtain a commitment of funds. They pointed out that the issue of financial resources can be addressed only in general terms prior to obtaining a commercial recovery permit, and at that stage an applicant could be expected only to demonstrate reasonable likelihood of access to funding. They proposed that any further detail or justification would be unreasonable at that time in their operations planning. NOAA agrees that available financial information likely would be more limited prior to issuance of a permit. NOAA also has concluded that more general information is sufficient to establish an applicant's financial responsibility, and generally had intended such an approach to this issue. Section 971.201(b) has been revised to clarify the nature of information which should be included in an application.

Statement of Technological Experience and Capabilities.—This subject is a prime example of where pre-existing information which NOAA has from a permit applicant's earlier application for an exploration license, or from his subsequent reports of exploration activities conducted under a license, may be referenced in the context of the commercial recovery permit application. This was the major thrust of several comments on proposed § 971.202, and NOAA agrees. NOAA has highlighted this approach by inserting a reference to the clarified § 971.200(e).

A commenter also proposed that, in view of first generation miners presenting plans for prototype technology, applicants should have freedom in the form by which their technical data and information are presented. NOAA believes this is appropriate, and the regulations were modified to enhance such flexibility.

One commenter suggested that the regulations require the testing of a mining system prior to applying for a commercial recovery permit; in the absence of such tests, the regulations and TCRs should specify the very preliminary, tentative nature of relevant determinations. Each of the existing licensees has in fact conducted at-sea testing of mining equipment, and testing may be conducted under an exploration license. Even considering this and the fact that NOAA is sympathetic with one comment that testing and monitoring should be encouraged, NOAA does not believe that such activities are absolutely necessary to demonstrate technological capability. At the time of NOAA's making final determinations on a permit application, however, TCRs would take account of any future information or verification requirements.

One commenter also suggested that the "best available technologies" requirement of the Act should be addressed in this section of the regulations. NOAA acknowledges this requirement in section 109(b) of the Act. It is addressed in §§ 971.423, 971.203(b)(3), 971.604 (a) and (c) and 971.602(f). Therefore, NOAA believes it is inappropriate to address the issue in § 971.202.

One commenter suggested that the regulations require training and certification, and expressed its particular interest in health and safety standards in this regard. NOAA has specifically addressed health and safety aspects elsewhere in the regulations—in §§ 971.205, 971.407 and 971.422, and in Subpart G—relying on Coast Guard vessel safety and inspection requirements. NOAA believes that this aspect is adequately addressed in those sections.

Commercial Recovery Plan.—Several commenters expressed concern that NOAA was requesting unrealistic detail in a commercial recovery plan, given the 20-year duration of a permit. NOAA had intended to take this consideration into account, as reflected in the terms of proposed § 971.203(a), wherein more detail was requested for the period leading up to commercial recovery. This subsection has been further clarified to say that the plan would project anticipated 20-year activities in a general way, and to acknowledge that a plan in advance of commercial operations would be preliminary and subject to change.

The comments also indicate some question as to whether NOAA's regulations conformed to the elements of a commercial recovery plan as set forth in section 103(a)(2)(C) of the Act. To confirm this conformance to the Act, § 971.203(b) has been revised to repeat more accurately these elements as they are set forth in the Act, while retaining cross references specifying requirements or determinations to which each element relates. NOAA finds such cross references helpful for its own purposes, and believes they would be helpful also

for others. In the course of revising § 971.203(b), a provision for characterizing the proposed mining system, in terms of environmental effects, has been moved to § 971.603(b), as part of the monitoring plan.

Several commenters focussed specifically on the issue of the "logical mining unit" (LMU), in one case seeking more restriction, and in others proposing more discretion by applicants. One commenter suggested that NOAA establish the LMU size; another recommended that the LMU be as small as possible. Both suggestions appear to be motivated by a concern for benthic impact. This concern drives several of the proposed rules but the Act does not allow LMU size to be subject to its influence. This raises the question of what is the applicant's role versus NOAA's role in determining an appropriate commercial recovery area. The Act and regulations reflect that the applicant will select the size and location of the area, which area will be approved unless the Administrator finds that, among other considerations, the area is not a logical mining unit. Section 103(a)(2)(E) of the Act and § 971.501 define an LMU, on which definition NOAA will rely in making its determination. As a basis for making this determination, NOAA must have certain information on resource assessment from the applicant. The regulations identify this element of the commercial recovery plan as the one primarily relevant to the required LMU determination.

One commenter suggested that environmental consequences of onshore processing should be included in the commercial recovery plan. NOAA believes this subject is addressed in the statutory elements which are listed in § 971.203(b)(3), (6), and (7).

Environmental Baseline Data.—Many comments were received concerning the need for a requirement for the applicant to submit environmental baseline information with the permit application. Several comments also mentioned that NOAA should list the required baseline environmental information necessary for EIS and TCR preparation. The regulations have been revised in § 971.204 to reflect these comments. Specifically, a list of environmental baseline parameters was added from NOAA's Deep Seabed Mining Technical Guidance Document pertaining to the upper and lower water column. These parameters should be included in the EIS prepared on a permit issued for an area that lies within the area of NOAA's earlier Deep Ocean Mining Environmental Study (DOMES). For a permit area outside the DOMES area, the applicant is encouraged to consult early with NOAA in order to determine the specific parameters that will be required to be measured. The regulations now contain a provision that the Administrator may require the submission of additional data if he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available. They also clarify that the EIS must characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm to the environment.

It was also suggested by one commenter than NOAA should assure that it has the means to measure the adequacy of the existing environmental information and to assess the need for the applicant to collect additional baseline information before the permit application can be processed. This commenter had in mind that NOAA should consult with experts in specific fields, including affected States, as appropriate. NOAA concurs with this recommendation. The procedures in the regulations allow for such consultations in general, and they also contain specific reference to consultation with States, as summarized below.

State Involvement.—Four commenters expressed concern that the proposed regulations did not provide for sufficient State agency consultation in decision-making. Two commenters specifically requested that States be consulted by NOAA in making its determination as to whether permit applications are complete for processing and that NOAA notify the applicant, or at a minimum consult with any affected State, regarding the need for a Federal consistency certification which may be required in compliance with the Coastal Zone Management Act, as amended. Three commenters expressed a need for formal inclusion of State interests in the public hearing and comment process, and another commenter expressed a desire for an "open channel" for State input to NOAA at times other than specifically designated comment periods. Two commenters stated that States would not begin the Federal consistency determination process until the final EIS and TCRs were in hand.

Due to the absence of any special provisions in the Act relating to States, NOAA believes the overriding applicable law and procedures are those under the Federal consistency provisions of the Coastal Zone Management Act. Section 971.101 contains new definitions, "Affected State" and "State agency," which are compatible with that statute. However, NOAA has considered the views of the commenters and has incorporated more specific opportunities for State agency consultation into the final regulations, which are compatible with the Federal consistency procedures. Sections 971.200(g), 971.212, 971.213, 971.401, 971.402, 971.419(b), 971.430, 971.606(b) and 971.802(g) now contain language which will encourage applicants to consult with affected States and local agencies as early as is practicable in the development of a permit application, and which clarifies formal opportunities for comments by affected States. In this way applicants can be aware of the Federal, State and other requirements and concerns which may help to shape the mineral mining and processing stages of commercial recovery. Other sections—§§ 971.200(h) and 971.412(f)—explicitly state the need for an applicant for a commercial recovery permit to meet the substantive and procedural requirements of the Coastal Zone Management Act and 15 CFR Part 930, Subpart D, where applicable. Under these provisions the State agency shall be responsible for coordinating comments with other State, regional and local agencies.

Although other agencies will be involved in the formal review and comment process preceding a final decision on certification of an application and issuance of a commercial recovery permit, the Administrator will determine whether an application for a commercial recovery permit is complete for formal processing under the Act. NOAA will make a concerted effort to work with other Federal and State agencies to satisfy mutual requirements for information where possible; however, due to the possible lead time involved in applying for a commercial recovery permit authorizing the offshore operations for deep seabed mining, it may not be possible to incorporate all the information requirements of those other permits needed for later stages of mineral recovery and waste disposal. However, NOAA does require applicants to supply sufficient information with the commercial recovery permit application to give full disclosure of these other commerical activities in the EIS as an indirect impact associated with issuance of the commercial recovery permit.

Comments received from other Federal agencies, affected State agencies, and the public in response to the draft EIS and proposed TCRs will be considered in issuance of a commercial recovery permit. Permittees will also be

put on notice in a TCR attached to the permit, that receipt of the NOAA permit does not alleviate the need to satisfy all other necessary statutory and regulatory requirements for proposed activities contained in the commercial recovery plan. Statutory and regulatory requirements other than those under the Act are not considered to be satisfied through issuance of the commercial recovery permit.

U.S. Vessel Requirements.—One commenter suggested it might be appropriate to define U.S. citizen for the purposes of the mining vessel—to be 100 percent American ownership with no foreign fiduciary obligation—in order to shield against foreign investments or construction diluting long range national interests of the United States. U.S. vessel requirements are specifically addressed in section 102(c) of the Act, which provisions are incorporated into these regulations (e.g. §§ 971.205(a) and 971.422 and Subpart G). NOAA does not have authority to establish U.S. vessel requirements beyond those in the Act, such as the suggested definition.

Antitrust Information.—NOAA requested comments on whether information related to the antitrust review, referenced in section 103(d) of the Act, should be specified in NOAA regulations as part of a commercial recovery permit application, or whether NOAA should play a role of advising a potential applicant informally as to what information the applicant should be prepared to provide to the Department of Justice (DOJ) and Federal Trade Commission (FTC), should those agencies request information under their own authorities. NOAA also set forth the antitrust information needs which generally had been identified by DOJ and FTC.

Two commenters' responses supported having NOAA's regulations require specified antitrust information as part of a commercial recovery permit application, with the specified ability of DOJ and FTC to obtain additional information if necessary for antitrust review. They also highlighted the need for adequate information in the first place before the time period for antitrust review should be allowed to run.

Three other commenters stated that they would prefer to submit all information in one application and through a single process—NOAA's permitting process—indicating that under the rules NOAA should maintain a "lead agency" function or serve as the single source of control and deadlines with this information as well as other permitting information. However, two of them said they would not want NOAA to include the details on antitrust information in the regulation; rather, the rule should make reference only to information which is relevant for the particular applicant with respect to antitrust review.

On the basis of these comments, NOAA has retained in § 971.211 the provisions for antitrust review, which reflect the statutory provisions on this subject. In order to assure that adequate information is available for the prescribed review, the rule clarifies that the review period follows receipt of an application that NOAA has determined pursuant to § 971.210 to be complete. As for setting forth actual information requirements, § 971.207 only specifies that antitrust information with an application must be sufficient, in the view of the applicant and based on pre-application consultations, to identify the application and describe any significant existing market share it has with respect to the mining or marketing of the metals to be recovered under the permit.

Subpart D—Issuance/Transfer/Terms, Conditions and Restrictions

Processing Outside U.S.—One commenter proposed dropping all restrictions on foreign processing, failing to realize that the restriction is a provision of the Act.

Two commenters recommended that the applicant submit an environmental assessment. Section 971.606(c) incorporates provisions for relevant onshore information outside the United States, when such processing is proposed, and has been referenced in § 971.408(d) for clarity.

One commenter stated that NOAA should not allow a permittee to operate under a lesser environmental standard, outside the U.S., than would be the case in the U.S. Imposition of environmental requirements on processing abroad is beyond the authority of the Act, however Executive Order 12114, requiring the environmental review of major Federal actions abroad, is applicable.

Duration of Permit.—Two commenters believed the 20-year duration of a permit to be too long given the infancy of the industry and the relative lack of environmental information on the deep sea environment, particularly the deep sea benthos. It was suggested that the length of permit be limited to time periods on the order of 5 years, with renewal contingent upon a finding of no significant adverse effect, diligence in exploration, and compliance with the TCRs.

The provision for a 20-year permit, "and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies," comes directly from the Act and therefore remains unchanged in the permit regulations. However, as discussed under environmental effects (§ 971.406 and §971.601), the regulations have been modified to account for the situation where there is insufficient information to adequately address the issue as to whether the commercial recovery proposed in a permit application can be expected to result in significant adverse effects on the environment. Now, if there is insufficient information to reasonably make a determination on this issue, a permit may still be issued if there is enough information to reasonably conclude that "irreparable harm" will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse effects issue. It is further noted that a permit is subject to modification or suspension, or ultimately revocation, prior to the end of a 20-year permit term if significant adverse environmental effects are revealed by such monitoring. As noted above, "significant adverse environmental effect" and "irreparable harm" are new additions to the definition list.

Subpart E—Resource Development

All of the comments on this subpart dealt with one or more aspects of *conservation*, as outlined below:

Mining Efficiency.—Two commenters opined that there would be little incentive to mine if a permittee were required to recover "nearly all the nodules" in an area, statements that indicated that the proposed rule was not drafted as clearly as it might have been. The ambiguous phrase has been removed from § 971.502(b).

Several commenters agreed with the proposed rule which allows market forces to effect a realistic efficiency of mining. One commenter recommended that NOAA establish a threshold, but NOAA believes such a requirement would be premature in view of the embryonic state of industrial development. NOAA is deleting the requirement of §971.501(c), which requested a discussion of prior test mining in relation to mining efficiency, to provide a more consistent approach to the notion of allowing market prices to prevail.

Chronology of Mining Sub-areas.—Two commenters questioned NOAA's authority to request a plan of the sequence in which a mine site's

mineable sub-areas will be mined. One asserted that this would place an unnecessary and difficult burden on pre-enactment explorers. Another stated that the chronology will only be generally known at the time of application. Another commenter offered the notion that NOAA's prime concern in this regard should be to prevent waste from intentionally poor mining practices aimed at high profits by "gutting" a site. This is precisely the motive behind the proposed §§ 971.501(b) and 971.502(b); NOAA is required to address this issue by section 110 of the Act. In consideration of the comments, proposed § 971.501(b), which called for a chronology of areas as part of a logical mining unit description, has been deleted. Subsection 971.502(b) has been clarified to provide that the description of the sequence of mining is expected to be preliminary and subject to change.

Mining Patterns.—Two commenters recommended that NOAA specify patterns; two others opined that NOAA should allow operators to develop their own patterns. NOAA is in sympathy with the latter view because patterns, efficiency, and chronology all are interrelated in the sense that they should comprise a mining strategy that takes into account the requirements of the Act's conservation requirement. This strategy is to be discussed in the permit application, pursuant to § 971.502(b).

Conservation of Unprocessed Manganese.—Comments from several parties indicated an inference not intended by NOAA in the proposal in § 971.502(c), "* * * not to render the magganese unavailable to future users, * * *" by stating that forced recovery and storage would not be economic. NOAA's rule requires neither present recovery nor storage.

One commenter approved of the proposed rule but asserted that the waiver (potentially allowing dispersal of tailings if necessary for the economic practicability of the operation) would defeat the purpose. NOAA does not intend to grant waivers, if requested, automatically, but rather will balance the need to encourage nodule mining against the potential future need for manganese, recognizing that the need is not likely to extend to all of the manganese generated by all of the operators.

Another commenter stated that the authority of the Administrator to cancel this waiver, as well as to amend the regulations in the event of a national need for manganese, introduces an uncertainty which affects the economic decisionmaking ability to permittees. NOAA agrees, but believes that the private sector is accustomed to caveats related to national emergencies.

General.—Two commenters disagreed with the wisdom of the exception in § 971.804 whereby amended regulations dealing with conservation would apply to then-existing permits only if they would not impose serious or irreparable economic hardship on the permittee. This exception is required by the Act.

Subpart F—Environmental Effects

General.—Several comments were received on the adequacy of the environmental parts of the July 1986 proposed permit regulations. For instance one coastal State agency noted that the broad general guidelines and principles regarding environmental protection, "* * * seems reasonable to us and we believe that NOAA's research program concerning the deep seabed environment can yield information important to identifying and mitigating any adverse effects which may be important to this State." Another coastal State noted: "We feel the two stage process of general regulations then permit specific terms, conditions and restrictions, (is) a safe route to take given the uncertainty of technologies and environmental concerns to be applied."

In contrast to the above reactions, there were a number of comments expressing concern over what was perceived to be a dearth of environmental guidelines, particularly given the infancy of the industry and technology and a relative lack of environmental knowledge of the deep sea environment. Highlights of these comments are: (1) Considering the lack of information of the deep sea environment, NOAA should undertake an expanded program of environmental assessment, that focuses on information needed to develop responsible regulatory requirements; (2) the regulatory process relies on after-the-fact monitoring to develop the information needed to assess adverse impacts, and then fails to provide assurance that this information will be used to modify permits so that harmful practices are stopped or mitigated; (3) there is a presumption that there will be no significant adverse environmental effects; (4) the environmental information available from monitoring will be available only after adverse effects have already occurred; and (5) the 20-year duration of a permit is too long, given the relative lack of information on the deep sea environment.

As explained below, certain changes have been made in these final regulations to clarify the environmental requirements. All the changes were proposed in the September 1987 supplemental proposed rule.

NOAA full well realizes the relative lack of information on the deep sea environment and has continued to pursue a research program to fill the major gaps. Presently, this research is focussed on the benthic impacts due to the sedimentation of particulate material suspended by a mining collector device or discharged as a benthic plume. NOAA is also investigating the possibility of conducting some environmental studies during the test of mining equipment in the next several years involving cooperation with other nations. Given the present state of the metals market and the negative influence this has had on commercial deep seabed mining plans, some of the results of these research efforts should be available before NOAA receives a permit application.

Criteria for Determination of Significant Adverse Effects.—The permit regulations have a new § 971.601—Environmental requirements, that was set forth in NOAA's supplemental proposed rule and that explicitly notes the environmental requirements which the Administrator must address in issuing a permit. These requirements are based on there being sufficient environmental information to make a determination that either: (1) The issuance of a permit cannot reasonably be expected to result in a "significant adverse environmental effect"; or (2) If there is insufficient information to make a determination on this question, no "irreparable harm" will come to the environment during a period when monitoring of commercial recovery is undertaken to further examine the significant adverse effects issue. This part of § 971.601 is patterned after the Ocean Discharge Criteria of the Clean Water Act regulations. However, NOAA will examine any perturbation to the environment caused by the issuance of a permit regardless of whether or not a particular mining system creates a discharge. Subsection 971.601(b) requires the applicant to have an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it (as required in §§ 971.201 and 971.202(b)(1)). As part of this structure, in the regulations, § 971.101—Definitions, new terms "significant adverse environmental effect" as well as "irreparable harm" have been defined, again using the pattern of the Ocean Discharge Criteria. New § 971.602—Significant adverse environmental effects, includes in

subsection (b) a cross-reference to the criteria in § 971.601(a).

The above changes will reasonably negate the possibility of "irreparable harm" occurring to the environment in the event of there being insufficient information to decide on the question of "significant adverse environmental effect," and monitoring is used to further examine this issue. Furthermore, § 971.406 has been modified to note that if a permit is granted under this scenario, it will be subject to modification, suspension or revocation if a significant adverse environmental effect is revealed by such monitoring. Also, § 971.417(h) specifies, as authorized in the Act, that such suspension or modification may be required immediately if necessary to prevent a significant adverse environmental effect. Thus, although a permit under such a scenario would still be issued for 20 years (a statutory requirement, see earlier discussion on duration of a permit), the effective period could be less in the event of the appearance of a significant adverse environmental effect that cannot be mitigated.

NOAA believes that adequate protection is being provided to the environment with the above noted changes and with the definitions of "significant adverse environmental effect" and "irreparable harm" (§ 971.101).

Environmental Requirements.—One commenter, while generally agreeing with the approach in the supplemental proposal, suggested that new § 971.601(a) be revised to clarify that ongoing monitoring is intended to gather sufficient information "in order to determine the potential for or occurrence of any significant adverse environmental effect." This suggestion has been incorporated.

Another commenter, while agreeing with modelling these provisions after EPA's Ocean Discharge Criteria, expressed the opinion that the EPA criteria should not be considered an ideal model, in that using such criteria for general NPDES permits can result in inadequate information with respect to site-specific effects. However, this concern should not affect NOAA's approach for its own permits. A NOAA permit is not general but is only site-specific. NOAA believes that the articulated criteria in § 971.601 are adequate for judging case-by-case, site-specific effects. Also, NOAA's initial determinations will continue to be checked for verification after permit issuance—not only through prescribed monitoring by the permittee but also by continuing research.

A commenter suggested that NOAA emphasize more the results of environmental study it has already accomplished in considering environmental criteria. NOAA intended that the factors or criteria set forth in the regulations be addressed within the context of accomplished studies, since they already have been addressed at the programmatic level in NOAA's programmatic EIS. In addition, a related section (§ 971.204(b)) highlights that, in preparing the EIS for assessing the environmental effects relating to each permit, the Administrator will utilize existing information.

Another commenter expressed a preference for a "'go-slow' and monitor approach" in lieu of the proposed irreparable harm procedure, since it was unclear to him how NOAA could make a reasoned "irreparable harm" determination. This commenter's approach in essence would be the same as originally proposed by NOAA. However, other commenters have stressed that greater specificity in the form of criteria was needed—which led to the latest approach that NOAA believes is responsive to earlier comments, is responsible and is manageable. Virtually all other commenters either explicitly support the current approach or have not objected to it.

Significant Adverse Environmental Effects.—One commenter suggested that § 971.602(b) should cross reference § 971.601(a) to clarify that environmental effects determinations will consider information reflected in the criteria listed in the previous section. A cross reference to § 971.601(a) has been added.

At-sea Monitoring.—Even though the proposed regulations on which comments were taken pertained solely to the issuance of permits, one commenter noted that NOAA's regulations for exploration licenses do not require companies to conduct monitoring unless they engage in at-sea mining tests. This commenter felt that, "while pre-systems test activities should not require extensive monitoring, some specified level of effort by the licensee would provide evolving information on deep ocean processes and the benthic community and thereby enhance the prospects of effective monitoring during commercial recovery phases when such data become even more crucial."

Although the exploration regulations distinguish between activities with no significant impact (not requiring monitoring) and activities, such as mining system tests, with potential impact (requiring monitoring), NOAA license TCRs are more detailed and recognize an intermediate spectrum of activities which could require monitoring. As a result, there is at least the potential for the gathering of additional environmental data, on the part of exploration licensees, even if no mining system tests are conducted.

The above commenter did note that, with respect to the proposed rule, they support NOAA's monitoring requirements. However, they further note that such monitoring is intended to assist NOAA in determining the existence of or potential for "significant adverse impacts" on the environment and that without a definition of such, the value of monitoring would be diminished. This concern has now been addressed with the new provisions explained above.

One commenter requested that NOAA produce a public field report on results of the monitoring program and observations. It is expected that full-scale monitoring will provide NOAA with much useful information in order to evaluate the TCRs, and develop possible mitigation measures. NOAA also recognizes that an observer, in performance of his duties on-board a mining vessel, will have access to information which the licensee/permittee considers to be proprietary. NOAA will protect such information in accordance with applicable law. There are no provisions or resources for publication of monitoring reports in entirety; however, the environmental aspects will be made public. With the exception of proprietary data, materials relevant to any of these actions will be available for public inspection in the Ocean Minerals and Energy Division office.

Another commenter noted that the costs of the monitoring requirements should be borne by the government. However, the Act requires licensees and permittees to monitor the environmental effects of their activities in accordance with guidelines issued by the Administrator.

Another commenter noted that "perhaps additional emphasis could be placed on fisheries issues." In response to this, under § 971.603(e)(2), the phrase "including commercially and recreationally valuable fish" has been added after "behavior of biota".

The EPA, as a commenter, noted that they "will have to address environmental impacts and monitoring of the surface and subsurface discharges in issuing any NPDES permit, including any necessary requirements under section 403(c) of the Clean Water Act (CWA)." In this context, EPA further noted that they will have to make

determinations related to "no unreasonable degradation" and "irreparable harm." They also suggested a revision to § 971.602(a), now § 971.603(a), to reflect "that monitoring requirements are to ensure early and accurate detection of environmental changes so as to prevent the occurrence of significant adverse effects from commercial recovery activities." In response to this latter point, NOAA did modify the section in question so as to state (§ 971.603(a)):

> An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to ensure compliance with the environmental protection requirements of this part.

In response to EPA's other comments concerning unreasonable degradation and irreparable harm, the new definitions and the new § 971.601—Environmental requirements, are quite compatible with the needs of EPA under the NPDES system and the Ocean Discharge Criteria. In addition, NOAA has refined the monitoring parameters listed in § 971.603(e), in order to provide greater compatibility with NPDES monitoring and to provide greater precision to the parameters.

One commenter recommended that miners should be called on to monitor the physical, local effects of mining, while further long term studies should be undertaken by NOAA. This commenter also observed that the monitoring proposed seems to be unlimited. NOAA believes that although § 971.603 calls for monitoring to include biological effects, that section also clarifies that the scope of such monitoring is focused or limited. The overall purposes of monitoring initially set out in the section provide this focus, e.g., monitoring should provide enough information to validate assessments made in the EIS.

Another commenter suggested that a third party, similar to the National Academy of Sciences, could provide monitors and develop a technical guidance document that could be available for public comment. The Act and NOAA's regulations specify that Federal observers be Federal officers or employees, but this would allow the discretion to include any persons in this category, including personnel other than NOAA employees. With respect to public review of guidance documents, NOAA's regulations and EIS's have always been the subject of and have benefited from public contribution. Public review would continue under the rules for such purposes as review of future applications and monitoring plans. The same commenter also proposed a one-year moratorium on mining operations to allow additional environmental assessment. This would be unnecessary, however, since no commercial recovery under the Act is planned or possible for over one year.

With respect to NOAA's proposal for selection of impact and preservational reference areas as part of a monitoring plan, two commenters, while supporting this approach, went on to suggest that NOAA should proceed with establishing criteria for such areas. NOAA has concluded that it is possible and appropriate to clarify the criteria in these rules, i.e., that each area should be representative of characteristics of the permittee's site—and has added this to § 971.603(c).

One of these commenters also proposed that designation of reference areas should be prior to issuance of a commercial recovery permit. NOAA believes that selection of such areas could precede a permit application, but that the designation would be provisional and would not become permanent until the permit and the approved monitoring plan associated with it have been issued. The regulations now clarify that this may be done.

One commenter urged that the regulations not allow the use of joint impact reference areas, since it could be difficult to trace an impact to a specific recovery process. However, another commenter suggested there may be a strong case, based on factors of efficiency, effectiveness and economy, for consolidating reference areas. NOAA has concluded that, although some situations may be inappropriate for joint impact reference areas, other situations may be appropriate and even advantageous (e.g., by coincidence of mine site characteristics, or for benefits from more efficient monitoring efforts that produce more information). Thus, the regulations should not unduly limit flexibility by prohibiting the possibility of joint areas.

A commenter expressed concern over environmental reference areas involving areas outside permit areas. Another commenter urged that any monitoring outside a permittee's mine site be qualified to cover only areas, and only such period of time, for which the Administrator determines that the permit activity has the potential to cause significant adverse environmental effect or irreparable harm in the outside area. Still another commenter suggested that reasonable limits should be placed on any external monitoring, and that such limits should be weighed against reasonable expectations regarding potential adverse environmental effects. With respect to monitoring outside specific reference areas, § 971.603(c) is explicitly limited to prescribe such reference areas only within permit areas. This reflects a limitation on the comparable but separate concept in section 109(f) of the Act which provides for international negotiations to establish international areas in the deep seabed as stable reference areas. As for monitoring outside a permit area generally, if this were deemed necessary, NOAA believes it is appropriate to set reasonable limits on such monitoring. Therefore, § 971.603(f) has been refined to clarify that such external monitoring would occur where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

One commenter stressed the need for minimizing if not eliminating the subjective element in assessing the activities under a monitoring program, and therefore suggested that whenever a work plan is approved subject to a monitoring requirement, the Administrator should define, to the maximum extent practicable, objective criteria which would trigger any requirement either to suspend operations or to take appropriate mitigating measures. NOAA believes this is a reasonable point and has refined § 971.603(f) to call for TCRs to include the identification of activities which could trigger suspension or modification requirements, or if necessary permit revocation.

Best Available Technologies (BAT) and Mitigation.—Although, as stated in proposed rule § 971.603(b) [now § 971.604(a)], NOAA is unable to define a specific technology(ies) as being the best available technologies (BAT), several commenters urged NOAA to reconsider its position. For those mining systems requiring an NPDES permit, it was pointed out that EPA will have to require the use of Best Conventional Pollutant Control Technology, assuming the mining discharge(s) are considered conventional rather than toxic pollutants. Therefore, the applicant must address the matter in terms of the Clean Water Act. One commenter suggested that applicants might explain their use of BAT in the context of how other alternatives were considered and rejected. Although NOAA continues to believe it is inappropriate to specify particular technologies as BAT, NOAA acknowledges the validity of some of the comments, and that the use of BAT

is required by section 109(b) of the Act. Therefore, NOAA is clarifying this provision in the regulations by adopting the approach utilized in implementation of the OCS Lands Act. Until NOAA is in a position to define performance standards or specify particular equipment or procedures comprising BAT, interim process will be adopted. An applicant will have to submit the information necessary to demonstrate that the requirements of section 109(b) of the Act will be met. The information must include the alternatives considered and the rationale supporting the selection process, including a discussion of the relative costs and benefits of the technologies considered.

Closely related to the use of BAT is the concept of mitigation, a particular approach to the avoidance of a potential problem. Three commenters recommended that mitigation measures be required. Another suggested the need for a plan that would describe how activities would be modified in the face of a perceived adverse impact. NOAA believes it is premature to require mitigation but agrees with the desirability of an applicant having to think about a potential need to deal with a problem triggered by the surface discharge of mining wastes. Accordingly, a requirement for a mitigation plan has been added to § 971.604(b).

One commenter suggested that the proposal in § 971.604(b) for an applicant to have a mitigation plan, only for surface vessel "discharges" that cause a significant adverse environmental effect, is too narrowly focused; that the mitigation plan provision should instead refer to "activities authorized under the permit." However, such a broadening in this instance would expand the provision beyond the particular potential problem that NOAA and others had identified, and which this provision was intended to address. At this point, NOAA has concluded there is insufficient justification for inserting any additional mitigation provision.

The same commenter also supported the provision in § 971.604(a) calling for an applicant to report on best available technologies and alternatives considered, and recommended that a similar analysis be included with subsequent reports, pursuant to § 971.604(c), on those technological or operational changes that will increase or have unknown environmental effects. NOAA believes this is a useful point consistent with its obligations pertaining to best available technologies, and has incorporated such a provision in § 971.604(c).

Conditional Standards for Onshore Activities.—While NOAA functions as lead agency in preparation of the EIS, it is not within this agency's purview to "govern" onshore activities nor to set "conditional standards" for any State to issue a license or permit, as requested by one commenter. As standards and restrictions vary widely from State to State, NOAA has emphasized the need for early consultation between the applicant and State and local governments, when more is known about processing techniques and the location of processing facilities. While the final regulations have substantially highlighted State involvement in permitting, it should be recognized that setting (and meeting) the conditions of any State permit is a responsibility between applicant and State.

Stable Reference Areas.—Comments received on the stable reference area (SRA) concept were mainly concerned with urging NOAA to designate some Impact Reference Areas (IRAs) and Preservational Reference Areas (PRAs) no later than the issuance of permits. One comment suggested that this be accomplished by NOAA stating in the regulations that the issuance of a permit is contingent upon the simultaneous designation of IRAs and PRAs. Another comment urged NOAA to make a mandatory designation of interim PRAs, which could be eliminated once international reference areas were established, and to designate areas within the mine sites for impact reference. As discussed above, a requirement has been added to new § 971.603—At-sea monitoring, which requires the monitoring of benthic impact through the study of two types of area, each selected by the permittee in consultation with NOAA: (1) An IRA which will be located in a portion of a permit area tentatively scheduled to be mined early; and (2) an interim PRA located in a portion of a permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan. Although the SRA provisions in the Act propose areas outside those licensed or permitted, NOAA believes that the above approach, which falls within NOAA's authority, is compatible with the purpose of the SRA concept.

It was also recommended by one of the above commenters that instead of just reserving a subsection of the commercial regulations for SRAs, NOAA should establish the framework for establishing criteria for identifying both IRAs and PRAs. Setting the framework in the final rules, it was thought, would encourage the international consultations with other nations which are required by the Act. NOAA, however, feels that it is more appropriate to continue to reserve the subsection and delay establishing criteria until the completion of the NOAA-sponsored research which was recommended in the 1984 National Research Council's report on deep seabed SRAs.

Reclamation and Compensation.—One commenter suggested that permittees be required to reclaim the seafloor following mining and that, further, permittees should compensate for environmental losses. The seafloor perturbation entails a scraping of the surface followed by a rain of fine sediment kicked up by the scraping action. Until more is learned about the nature and extent of impact on the benthic fauna, and their repopulation, NOAA believes that a reclamation requirement would be premature and could lead to as much or more damage to the benthic fauna than from mining.

The Act does not provide authority for compensation for the types of impacts characterized in NOAA's PEIS.

Subpart H—Miscellaneous

Records To Be Maintained by Licensees and Permittees.—In accordance with the Act, NOAA requires that records be maintained by each licensee and permittee, which will fully disclose expenditures in the area under license or permit, and provide any other information to facilitate an effective audit of these expenditures. The proposed regulations also incorporated provisions from the Act allowing Federal Government access to such records (§ 971.801(a)(2)). One commenter requested the specification that such access be only upon a finding by the Administrator of good cause, in order to protest the licensee or permittee from unnecessary audits. NOAA had retained the statutory language, because it has concluded that the prescribed access provides for routine inspections carried out in a neutral fashion. These are a regular part of implementing a licensing program. Furthermore, NOAA believes the language itself limits the potential for abuse by requiring access to records which are "necessary and directly pertinent" to expenditure verification.

Disclosure of Confidential and Proprietary Information.—Two commenters requested that NOAA make some provision in its regulations for release of confidential/proprietary data into the public domain. Under the provisions of the Trade Secrets Act (18

U.S.C. 1905), NOAA is prohibited from unilateral disclosure of any information or data that is commercially confidential, unless the applicant waives or withdraws the request for confidentiality, or specifies an expiration date at the time of submission of the data. NOAA's procedure for handling requests for disclosure of privileged information from an applicant is outlined in § 971.802 of these regulations. Certain time limits in § 971.802(d) have been modified to conform to the Department of Commerce regulations implementing the Freedom of Information Act (53 FR 6972).

One commenter requested that procedures be defined so that affected States may receive confidential information. While NOAA recognizes that affected States may require certain proprietary information from an applicant for purposes of Federal consistency decisions under the Coastal Zone Management Act, these transactions are primarily between the applicant and the affected State, and have been addressed in the regulations for Federal consistency, 15 CFR Part 930. This perspective is reiterated in § 971.802(g) of these regulations.

Amendment to Regulations.—One commenter proposed that NOAA should state in the regulations that revision of the regulations will be accomplished through formal rulemaking three years from their effective date in order to take into account new information on environmental impact, technological development, conservation, etc. For the same reasons, the commenter also proposed subsequent periodic revisions, at least every three years, until commerical recovery is underway. Under the provisions of § 971.804, NOAA may amend its regulations through formal rulemaking at any time the Administrator determines it to be appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. NOAA may periodically modify these rules for nonsubstantive purposes as well, such as conforming them to governing procedures on public information. For example, these rules include technical amendments to and consolidation with portions of 15 CFR Part 970, to which no objections were made. In addition to referring to information submitted by licensees in their annual reports, NOAA has a continuing program of environmental research and assessment in order to ensure that relevant data are reflected in the TCRs of a license or permit. Any significant new development which may affect the quality of the environment, conservation, or safety at sea, or new data resulting from mining activities under the license/permit may be the subject of amendment to the regulations or modification to the TCRs. In addition, NOAA has a statutory requirement to submit a biennial report to Congress containing an evaluation of exploration and commercial recovery activities, resource recovery and disposition, and an assessment of the environmental impacts, including any damage caused by any adverse effects, on the quality of the environment resulting from mining activities. In view of the extensive avenues for oversight of regulatory effectiveness and license/permit compliance, the initiation of additional rulemaking, for which no requirement for revision may exist, appears excessive to NOAA.

Subpart J—Enforcement

Observers.—Several commenters were concerned with the effectiveness, frequency and authority of Federal observers. One commenter favored minimizing interference with mining activities. NOAA has already drafted § 971.1005 to assure this purpose. Another commenter favored expansion of observer authority to enforce immediate suspension of activities. Under section 114 of the Act, the function of the Federal observer is to monitor and assess the effectiveness of the TCRs of the license or permit, and to report to the Administrator any infraction as appropriate. Licensees and permittees are required to monitor environmental effects of their activities under NOAA's guidelines. As discussed in the Notice of Proposed Rulemaking, NOAA will place Federal observers onboard mining ships to observe operations, collect additional data to improve estimates of environmental effects, test new or alternative methodologies or equipment for monitoring, and evaluate possible mitigation techniques. However, NOAA believes that to provide for unilateral suspension of mining activities by a Federal observer would constitute an unjustified expansion of an observer's authority. NOAA wishes to assure broader consideration prior to any suspension.

In response to comment, language has been added to § 971.1005 of the regulations for emplacement of an observer on each permittee's mining vessel(s) at least once during the initial year of commercial recovery activities. Such a requirement will ensure that NOAA is in a position to judge the effectiveness of an operator's monitoring program. If problems are observed in the technical ability to carry out an approved monitoring plan, NOAA will be able to take corrective measures. While NOAA intends to observe operations on a random schedule during the life of a permit, this new requirement should increase public confidence in the ability of operators to monitor properly their activities.

A commenter suggested that the regulations provide for appropriate State observers if operations are taking place adjacent to a State EEZ. This commenter also suggested strengthening the channel for State input to the Administrator. As the State observers, it has been noted that section 114 of the Act provides only for Federal officers or employees as observers. It should also be noted, however, that these regulations, like the Act, apply to minerals beyond any national jurisiction; these minerals thus could not really be considered adjacent to any State of the United States. Nevertheless, NOAA would be prepared to cooperate with States on monitoring if a clear State interest were identified with respect to any particular activities under a permit. As for strengthening channels for States' input, other sections of the regulations have been clarified to highlight opportunities for consultation with States (e.g., §§ 971.200(g), 971.212 (b) and (d), 971.401 and 971.402).

Other Comments

Exploration.—One commenter urged NOAA to amend the exploration license regulations to require applicants to provide information necessary for the Administrator to make findings relating to commercial recovery. NOAA believes that mineral exploration efforts so seldom involve any aspect of commercial operations that a requirement of this sort would place a burden on applicants that would generally never be used and, at best, would be premature.

Applicable Minerals.—One question dealt with the categories of minerals covered by the proposed regulations. The Act limits NOAA's authority to nodules occuring on or just below the surface of the deep seabed and including one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper. The nodules are most commonly termed, "manganese nodules."

Geographic Coverage of the Regulations.—One commenter wondered whether the proposed regulations were intended to be restricted to the Deep Ocean Mining Environmental Study (DOMES) area or

to additional areas. The area of jurisdiction of the Act, as set forth in section 4(4), is that area lying seaward of and outside—(A) the continental shelf of any nation; and (B) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the continental shelf of such nation and such jurisdiction is recognized by the United States. Therefore, the regulations are applicable to, but are not restricted to, the DOMES area.

Uniform Regulatory Regime.—Two commenters pointed out that while NOAA regulates U.S. citizens engaged in exploration and commercial recovery in the deep seabed, the U.S. Department of the Interior regulates similar activities occuring on the U.S. continental shelf. They opined that a uniform regulatory regime would provide for uniform protection for other marine resources and would entail less duplication of services. NOAA believes that it is not necessarily desirable for resources in international waters to be developed under regulations which are the same as for sovereign U.S. resources. However, many aspects of development are similar and, to that extent, NOAA and the U.S. Department of the Interior will continue to share information and ideas.

Classification Under Executive Order 12291

The NOAA Administrator considers these regulations to be major with respect to the criteria of Executive Order 12291 (E.O. 12291) of February 17, 1981, because they will foster and govern development of the United States deep seabed mining industry. As explained under "Structure of the Regulations," several provisions of the Act require identical or nearly identical responses in each of two phases of deep seabed mining activity (exploration and commercial recovery). As a result, NOAA is consolidating these portions of the regulations. Accordingly, these regulations will supercede Subparts, I, J, and K of 15 CFR Part 970. NOAA has prepared and transmitted to the Office of Management and Budget a regulatory impact analysis as specified by section 3 of E.O. 12291.

The Administrator of NOAA has determined that these rules are within the authority delegated by law and consistent with Congressional intent. These regulations are promulgated pursuant to section 308 of the Act. Section 308 requires the Administrator to issue regulations necessary and appropriate to implement the first three Titles of the Act. These Titles generally require establishment by the Administrator, in accordance with the requirements of the Act, of a regulatory program governing: application for, and issuance of, deep seabed hard mineral resource exploration licenses and commercial recovery permits (see, *e.g.*, section 102 of the Act); establishment of license and permit TCRs (section 105(b) and sections 108–112 of the Act); agency supervision of conduct of activities authorized under licenses and permits (see, *e.g.*, sections 105(c), 106, 113, 114 and 308(c)); and enforcement (Title III).

In 1981, NOAA issued regulations pertaining to exploration (15 CFR Part 970). At that time NOAA also issued a Programmatic Environmental Impact Statement (September 1981) which contemplated subsequent issuance of commercial recovery regulations. These final regulations complete the process of establishing the regulatory regime by which U.S. citizens may apply for permits and conduct commercial recovery under the Act, and are clearly authorized by the Act.

The regulations are also consistent with Congressional intent. The major Congressional objective in enacting the Act was to encourage potential investment in deep seabed mining by establishing a regulatory regime under which U.S. citizens, could, with reasonable certainty and security, exercise the high seas freedom to engage in exploration for, and commercial recovery of, these hard mineral resources. (Sections 2(a)(11–14), 2(a)(16) and 2(b)(3).) Congress was also concerned that the regime be consistent with international law and encourage resource conservation, protect the environment and promote safety to life and property at sea. (Section 2(b)(4).) The Act contains detailed permit application and issuance provisions designed to accommodates and balance these objectives, and also provisions which authorize agency action to provide for future contingencies with regard to the concerns above. (See, *e.g.*, Sections 105(c) and 308 regarding post-permit issuance TCR and regulation revision, and section 106 regarding modification, suspension and revocation.) The final regulations adhere closely to the provisions of the Act. The regulations also recognize, as did Congress, that mining technology, environmental assessment information and other factors relevant to commercial recovery under the Act would develop and change over time. The regulations are therefore generally designed to give permit applicants flexibility in the manner in which they meet the requirements of the Act, subject to the Act's specific requirements and to NOAA's continuing authority to act in the event that subsequent developments affect environmental, international or other concerns of the Act. As indicated in the "Public Comment Opportunities" section of the preamble and in the responses to specific comments, there have been many opportunities for public comment on these regulations, and most commenters generally support the basic approach taken in the regulations to implementation of the Act. Specific issues have been addressed with reference to the Congressional objectives outlined and those expressed in the provisions of the Act itself. Consequently, the Administrator has determined that the requirements of E.O. 12291(4)(a) have been met.

Regulatory Impact Analysis

NOAA has prepared a regulatory impact analysis on these regulations. This analysis, which examines the potential impact of the proposed regulations, is available to all interested parties. The analysis examines the various alternatives NOAA considered as it addressed the major issues in the regulations, including alternatives advocated by interest groups; considers benefit and cost implications of the alternatives; and explains NOAA's reasons for making the choices reflected in these regulations. The analysis includes discussion of regulatory flexibility in compliance with the Regulatory Flexibility Act, Pub. L. 96–354.

Summary of Discussion Related to Regulatory Flexibility

Because of the large scale and costs of deep seabed mining operations, the primary involvement of small business concerns in this industry is expected to be as contractors or subcontractors, rather than as sole owners or operators. Only one permit, obtained by the overall operator, is required. The general regulatory approach selected by NOAA for these regulations was designed to provide the greatest flexibility for, and to minimize any adverse economic impact on any entity—large or small—which may be involved in deep seabed mining development. The regulations do not impose any reporting, recordkeeping, or other compliance requirements on small governmental jurisdictions or small organizations. Copies of the regulatory impact analysis, which contains a discussion related to regulatory flexibility, may be obtained by writing to NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the ADDRESSES section of this rulemaking.

Paperwork Reduction Act, Public Law 96–511

Pursuant to the requirements of the Paperwork Reduction Act NOAA has evaluated the paperwork requirements incurred through compliance with the regulations for the issuance and maintenance of commercial recovery permits. The paperwork resulting from most of the regulatory provisions, especially those dealing with the application process, consists largely of information generated by industry in the pursuit of financial assistance and general management and entails little or no additional paperwork than would otherwise be necessary in conducting deep seabed operations. The balance of paperwork results from environmental monitoring which will be the direct result of implementation of the Act through regulatory measures. The data gathered are only those necessary for compliance with the statutory mandate.

Since application for commercial permitting has not occurred and is not likely to occur until the end of the exploration phase—in 1994—NOAA, in consultation with representatives of industry and OMB, initially has projected one burden hour for the collection, which number would be used until experience indicates a better estimate. Subsequent to the above initial consultations, in the July 1986 proposed rules, industry as well as the rest of the public were specifically invited to comment on the information collection requirements of the rule. No further comments on this particular issue were received. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under Control No. 0648–0170.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Padan, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235; and to the Office of Information and Regulatory Affairs, ATTN: Desk Officer for NOAA, Office of Management and Budget, Washington, DC 20503.

Environmental Assessment

Pursuant to section 109(c) of the Act and the National Environmental Policy Act of 1969, NOAA has prepared a final programmatic environmental impact statement (PEIS) assessing the environmental impacts of commercial recovery in the area of the oceans in which such activities by any United States citizen will likely first occur under the authority of the Act. The PEIS was filed with the Environmental Protection Agency in September 1981. Copies may be obtained by writing NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the ADDRESSES section of this rulemaking. NOAA has also prepared an environmental assessment (EA) which updates the PEIS and which confirms a finding of no significant impact on the quality of the human environment from the promulgation of these regulations. The EA is available at the above location for review upon request.

List of Subjects in 15 CFR Parts 970 and 971

Administrative practice and procedures, Environmental protection, Marine resources, Marine safety, Reporting requirements, Seabed mining.

Accordingly, it is proposed to add new Part 971 and amend Part 970 to 15 CFR Chapter IX, Subchapter D, as follows.

Dated: December 6, 1988.

William E. Evans,

Under Secretary, NOAA.

PART 971—DEEP SEABED MINING REGULATIONS FOR COMMERCIAL RECOVERY PERMITS

Subpart A—General

Sec.

Subpart B—Applications

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Procedures

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Terms, Conditions and Restrictions

Subpart E—Resource Development

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Subpart H—Miscellaneous

Subpart I—Uniform Procedures

Subpart J—Enforcement

Authority: 30 U.S.C. 1401 *et seq.*

Subpart A—General

§ 971.100 Purpose.

The purpose of this part is to implement the responsibilities and authorities of the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to Pub. L. 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens permits for the commercial recovery of deep seabed hard minerals.

§ 971.101 Definitions.

For purposes of this part, the term

(a) "Act" means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, or the Administrator's designee;

(c) "Affected State" means any State with a coastal zone management program approved under Section 306 of the Coastal Zone Management Act, as amended, where coastal zone land and water uses are affected by the issuance of a commercial recovery permit under the provisions of the Act or this part;

(d) "Applicant" means an applicant for a commercial recovery permit pursuant to the Act and this part; as used in subparts H, I and J of this part, "applicant" also means an applicant for an exploration license pursuant to the Act and Part 970 of the title. "Applicant" also means a proposed permit transferee;

(e) "Commercial recovery" means—

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) "Continental Shelf" means—

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) "Controlling interest", for purposes of paragraph (v)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) "Deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) "Environment" or "environmental" as used in the definitions of "irreparable harm" and "significant adverse environmental effect" means or pertains to the deep seabed and ocean waters lying at and within the permit area, and in surrounding areas including transportation corridors to the extent that they might be affected by the commercial recovery activities, and the living and non-living resources of those areas;

(j) "Exploration" means—

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(k) "Hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which is manganese, nickel, cobalt, or copper;

(l) "Irreparable harm" means significant undesirable effects to the environment occurring after the date of the permit issuance which will not be reversed after cessation or modification of the activities authorized under the permit;

(m) "Licensee" means the holder of a license issued under NOAA regulations to engage in exploration;

(n) "NOAA" means the National Oceanic and Atmospheric Administration;

(o) "Permittee" means the holder of a permit issued or transferred under this part to engage in commercial recovery;

(p) "Person" means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) "Reciprocating state" means any foreign nation designated as such by the Administrator under section 118 of the Act;

(r) "Recovery plan" or "commercial recovery plan" means the plan submitted by an applicant for a commercial recovery permit pursuant to § 971.203;

(s) "Significant adverse environmental effect" means: (1) important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic

organisms; or (3) important loss of aesthetic, recreational, scientific or economic values;

(t) "State agency" means the agency responsible for implementing the responsibilities of Section 306(c)(5) under the Coastal Zone Management Act, as amended, and 15 CFR Part 930;

(u) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(v) "United States citizen" means—

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (v)(1) or (v)(2).

§ 971.102 Nature of permits.

(a) A permit issued under this part authorizes the holder thereof to engage in commercial recovery within a specific portion of the sea floor consistent with the provisions of the Act and this part and consistent with the specific terms, conditions, and restrictions (TCRs) applied to the permit by the Administrator.

(b) A permit issued under this part is exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license under 15 CFR Part 970 will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected from within the license area. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, tranport, use, and sell hard mineral resources recovered under the permit and in accordance with the requirements of the Act and this part.

§ 971.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.*

(1) No United States citizen may engage in any commercial recovery unless authorized to do so under—

(i) A permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section do not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted onshore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or any relevant international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any permittee which is authorized to be undertaken under a permit issued by the Administrator to a permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license or permit issued pursuant thereto; the filing of a specious claim in the United States or any other nation; and any other activity designed to harass, or which has the effect of harassing, persons conducting deep seabed mining activities authorized by law. Interference does not include the exercise of any superior rights granted to United States citizens by the Constitution of the United States, or any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of permits.* The Administrator will not issue any permit—

(1) After the date on which any relevant international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of the permit is not inconsistent with that agreement.

(2) The recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under 15 CFR Part 970 or this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) An equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) Authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Which authorizes commercial recovery to commence before January 1, 1988;

(5) The recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for that permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act;

(6) Or approve the transfer of a permit, except to a United States citizen; or

(7) That would authorize commercial recovery activities in an area other than for which the applicant therefore holds a valid exploration license under part 970 of this title.

§ 971.104 OMB control number.

The information collection requirements and reporting and recordkeeping requirements contained in this part were approved by the Office of Management and Budget under control number 0648–0170.

Subpart B—Applications

§ 971.200 General.

(a) *Who may apply; how.* Any United States citizen holding a valid exploration license may apply to the Administrator for issuance of a commercial recovery permit for all or part of the area to which the license applies. Any holder of a commercial recovery permit may apply to the Administrator for transfer of the permit. Applications must be submitted in the form and manner described in this subpart.

(b) *Place, form and copies.* An application for the issuance or transfer of a commerical recovery permit must be in writing, verified and signed by an authorized officer or other authorized representative of the applicant. The application and 25 copies thereof must be submitted to:

Ocean Minerals and Energy Division, Office of Ocean and Coatal Resource Management, National Oceanic and Atmospheric Administration, Suite 710, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The Administrator may waive in whole or in part, at his discretion, the requirement that 25 copies of an application be filed with NOAA.

(c) *General contents.* The application must contain a proposed commerical recovery plan and the financial, technical, environmental and other information specified in this part, which in total are necessary for the Administrator to make the determinations required by the Act and this part. Although the ultimate standards for determinations under these rules are identical for both transferees and original preexisting licensees, NOAA anticipates that applicants who are transferees will have to supply more information with the application than licensees will [see subsection (e) in this section].

(d) *Identification of requirements.* Each portion of the application should identify the requirements of this part to which it responds.

(e) *Information previously submitted in connection with an exploration license.* Information previously submitted as part of an exploration license application, as well as information submitted during the course of license activities (such as data included in annual reports to NOAA), may be incorporated in the commercial recovery permit application by reference.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in its application not be subject to public disclosure, it must so request, at the time of submitting the information, pursuant to § 971.802 which will govern disposition of the request.

(g) *Pre-application consultation.* The Administrator will make NOAA staff available to potential applicants for pre-application consultations on how to respond to the provisions of this part. In appropriate circumstances, the Administrator will provide written confirmation to the applicant of oral guidance resulting from such consultations. Such consultation is required for the purpose of § 971.207. The applicant is encouraged to consult with affected States as early as is practicable [see also §§ 971.213 and 971.606(b)].

(h) *Compliance with Federal consistency requirements.* An applicant for a commercial recovery permit must comply with all necessary requirements, including procedures, pursuant to 15 CFR Part 930, Subpart D. Applications and other necessary data and information must be transmitted to the designated State agency as prescribed under 15 CFR 930.50.

Contents

§ 971.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have access to the financial resources to carry out, in accordance with this part, the commercial recovery program set forth in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information on financial resources is expected to be general in nature but must include the likely sources and timing of funds to meet the applicant's scheduled expenditures in the recovery plan. These sources may include cash flow, reserves, and outside funding.

§ 971.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have the technological capability to carry out, in accordance with the regulations contained in this part, the commercial recovery program set out in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information submitted pursuant to this section must describe the equipment, knowledge, and skills the applicant possesses, or to which it can demonstrate access [see § 971.200(e)]. The information must include:

(1) A description of the technology or the equipment and methods to be used by the applicant in carrying out each step in the mining process, including nodule collection, retrieval, transfer to ship, environmental monitoring, transport to processing facilities, nodule processing, waste disposal and compliance with applicable water quality standards. The description must include:

(i) An analysis of the performance of experimental systems, sub-systems, or analogous machinery;

(ii) The rationale for extrapolating from test results to commercial mining. The more test data offered with the application the less analysis will be expected; and

(iii) Anticipated system reliability within the context of anticipated production time lost through equipment failure.

(2) A functional description of the types of technical persons on whom the applicant will rely to operate its equipment.

§ 971.203 Commercial recovery plan.

(a) *General.* The application must include a proposed commercial recovery plan which describes the applicant's projected commercial recovery activities, in a general way, for the twenty year period to be covered by the proposed permit. Although preliminary and subject to change, the plan must be more detailed for that portion of the permit term leading up to the initiation of commercial recovery. The plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a permit and to the development and enforcement of the TCRs for a permit.

(b) *Specific.* The plan must include:

(1) A description of the activities proposed to be carried out during the period of the permit;

(2) The intended schedule of commercial recovery (see "Diligent commercial recovery," § 971.503);

(3) Environmental safeguards and monitoring systems, which must take

into account requirements under Subpart F of this part, including best available technologies (BAT) (§ 971.604) and monitoring (§ 971.603);

(4) Details of the area or areas proposed for commercial recovery, which meet requirements for diligence (§ 971.503) and conservation of resources pursuant to Subpart E (especially § 971.502);

(5) A resource assessment of the area or areas proposed for commercial recovery which meets the requirements for resource assessment and logical mining unit (§ 971.501);

(6) A description of the methods and technology to be used for commercial recovery and processing (see § 971.202(b)(1)); and

(7) The methods to be used for disposal of wastes from recovery and processing, including the areas for disposal and identification of any toxic substances in wastes.

§ 971.204 Environmental and use conflict analysis.

(a) *Environmental information submission.* The application must be supported by sufficient marine environmental information for the Administrator to prepare an environmental impact statement (EIS) on the proposed mining activities, and to determine the appropriate permit TCRs based on environmental characteristics of the requested minesite. The Administrator may require the submission of additional data, in the event he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available.

(b)(1) In preparing the EIS, the Administrator will attempt to characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm triggered by commercial mining (see Subpart F). In compiling these data, the Administrator will utilize existing information including the relevant license EIS, additional exploration data acquired by the applicant, and other data in the public domain.

(2) The EIS must present adequate physical, chemical, and biological information for the permit area. If the permit area lies within the area of NOAA's Deep Ocean Mining Environmental Study (DOMES), the parameters listed in NOAA's Technical Guidance Document pertaining to the upper and lower water column should be included. Specifically, these parameters include:

(i) Upper water column—

Nutrients
Endangered species
Salinity, temperature, density
Currents.

(ii) Lower water column and seafloor—

Currents
Suspended particulate matter dispersion
Sediment characteristics (mineralogy, particle size, shape and density, and water content)
Topography
Benthos.

(3) For a permit area outside the DOMES area, the applicant is encouraged to consult with NOAA at the earliest opportunity in order to determine the specific parameters to be measured based on the location and specific environmental characteristics of the permit area. The Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, may determine that a programmatic EIS is required for any new area.

(c) The application must include a monitoring plan for test mining and at-sea commercial recovery activities which meets the objectives and requirements of § 971.603.

(d) *Use conflict analysis.* The application must include information known to the applicant on other uses of the proposed mining area to support the Administrator's determination regarding potential use conflicts between commercial mining activities and those activities of other nations or of other U.S. citizens.

(e) *Onshore information.* Because of NEPA requirements, the Administrator must include in the EIS on the proposed permit the complete spectrum of activities resulting from the issuance of a permit. Therefore, onshore information including the location and operation of nodule processing facilities must be submitted with the application in accordance with the details in § 971.606.

§ 971.205 Vessel safety and documentation.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to § 971.407, § 971.422 and Subpart G of this part, the application must contain the following information for vessels used in commercial recovery, except for those vessels under 300 gross tons which are engaged in oceanographic research:

(a) *U.S. flag vessel.* All mining ships and at least one of the transport ships used by each permittee must be documented under the laws of the United States. To the extent that the applicant knows which United States flag vessels it will use, it must include with its application copies of the vessels' current valid Coast Guard Certificates of Inspection.

(b) *Foreign flag vessels.* To the extent that the applicant knows which foreign flag vessel(s) it will be using for other purposes, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels it will be using, it must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 971.206 Statement of ownership.

(a) *General.* The application must include sufficient information to demonstrate that the applicant is a United States citizen.

(b) *Specific.* In particular, the application must include:

(1) Name, address, and telephone number of the United States citizen responsible for commercial recovery operations;

(2) A description of the citizen or citizens engaging in commercial recovery, including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation or state in which the partnership or other business entity is registered;

(iii) The name and place of business of the registered agent or equivalent representative to whom notices and orders are to be delivered;

(iv) Copies of all essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(v) The name of each member of the association, partnership, or joint venture, including information about the participation and/or ownership of stock of each partner or joint venturer.

§ 971.207 Antitrust information.

In order to support the antitrust review referenced in § 971.211, the application must contain information sufficient, in the applicant's view and based on preapplication consultations pursuant to § 971.200(g), to identify the applicant and describe any significant existing market share it has with respect to the mining or marketing of the metals proposed to be recovered under the permit.

§ 971.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of a permit will be certified unless the applicant pays to NOAA an administrative fee which reflects the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* A fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce, must accompany each application. If the administrative costs of reviewing and processing the application are significantly less than or in excess of $100,000, the Administrator, after determining the amount of the under- or over-charge, as applicable, will refund the difference or require the applicant to pay the additional amount before issuance or transfer of the permit. In the case of an application for transfer of a permit to, or for a significant change to a permit held by, an entity which has previously been found qualified for a permit, the Administrator may reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee.

§ 971.209 Processing outside the United States.

(a) Except as provided in this section and § 971.408, the processing of hard minerals recovered pursuant to a permit shall be conducted within the U.S., provided that the President or his designee does not determine that this restriction contravenes the overriding national interests of the United States.

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a finding pursuant to § 971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the § 971.408(a)(1) finding.

(d) The applicant must include in its application satisfactory assurances that such resources after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use if the Administrator determines pursuant to § 971.408 that the national interest necessitates such return. Assurances must include proposed arrangements with the host country.

Procedures

§ 971.210 Determination whether application is complete for further processing.

Upon receipt of an application, the Administrator will review it to determine whether it includes information specifically identifiable with and fully responsive to each requirement in § 971.201 through § 971.209. The Administrator will notify the applicant whether the application is complete within 60 days after it is received. The notice will identify, if applicable, in what respects the application is not complete, and will specify the information which the applicant must submit in order to make it complete, why the additional information is necessary, and a reasonable date by which the application must be completed. Application processing will not begin until the Administrator determines that the application is complete.

§ 971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of an application that the Administrator has determined pursuant to § 971.210 is complete, the Administrator will distribute a copy of the application to every Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, International Trade Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application, recommend certification of the application, issuance or transfer of the permit, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

(c) In any case in which a Federal agency or department recommends a denial, it must set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and how the application may be amended, or how TCRs might be added to the permit, to assure compliance with such law or regulation.

(d) NOAA will cooperate with such agencies and with the applicant with the goal of resolving any concerns raised and satisfying the statutory responsibilities of these agencies.

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as appropriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§ 971.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the **Federal Register**, for each complete application for issuance or transfer of a commercial recovery permit, notice that the application has been received. Subject to § 971.802, interested persons will be allowed to examine the

materials relevant to the application, and will have at least 60 days after publication of notice to submit written comments to the Administrator.

(b) *Hearings.* After preparation of the draft environmental impact statement (EIS) on an application, the Administrator will hold a public hearing on the application and the draft EIS in an appropriate location and may employ additional methods he/she deems appropriate to inform interested persons about each application and to invite comments thereon. A hearing will be conducted in any State in which a processing plant or any of its ancillary facilities (such as a marine terminal or a waste disposal facility) are proposed to be located.

(c) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(d) Hearings held pursuant to this section and other procedures will be consolidated, if practicable, with hearings held and procedures employed by other Federal and State agencies.

§ 971.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a permit, the applicant must submit an amendment to the application if there is a significant change in the circumstances represented in the original application which affects the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, the Administrator will provide a copy of that amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 971.212. After the issuance or transfer of a permit, any revision of the permit will be made pursuant to § 971.413. Any amendment or modification which would cause coastal zone effects substantially different than those originally reviewed by the state agency would be subject to Federal consistency review as prescribed in 15 CFR Part 930.

§ 971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

§ 971.300 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a permit and actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a permit, the Administrator must determine that issuance of the permit would not violate any of the restrictions in § 971.103(b). The Administrator also must make written determinations with respect to the requirements with respect to the requirements set forth in § 971.301.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification within 100 days after receipt of a complete application. If final certification or denial of certification has not occurred within 100 days after receipt of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the efforts to resolve them, and an estimate of the time required to do so.

§ 971.301 Required findings.

Before the Administrator may certify an application for a commercial recovery permit, the Administrator must:

(a) Approve the size and location of the commercial recovery area selected by the applicant, and this approval will occur unless the Administrator determines that (1) the area is not a logical mining unit under § 971.501, or (2) commercial recovery activities in the proposed area would result in a significant adverse environmental effect which cannot be avoided by imposition of reasonable restrictions; and

(b) Find that the applicant—

(1) Has demonstrated that, upon issuance or transfer of the permit, the applicant will be financially responsible to meet all obligations which may be required to engage in its proposed commercial recovery activities;

(2) Has demonstrated that, upon permit issuance or transfer, it will possess, or have access to, the technological capability to engage in the proposed commercial recovery;

(3) Has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act;

(4) Has a commercial recovery plan which meets the requirements of § 971.203; and

(5) Has paid the permit fee specified in § 971.208.

§ 971.302 Denial of certification.

(a) The Administrator may deny certification of an application if the Administrator finds that the requirements of this subpart, or the requirements for issuance or transfer under § 971.403 through § 971.408, have not been met.

(b) When the Administrator proposes to deny certification the Administrator will send to the applicant, via certified mail, return receipt requested, and publish in the **Federal Register**, written notice of intention to deny certification. The notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is received by the applicant, under paragraph (b) of the section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if that deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the

applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.303 Notice of certification.

Upon making a final determination to certify an application for a commercial recovery permit, the Administrator will promptly send written notice of the determination to the applicant.

Subpart D—Issuance/Transfer: Terms, Conditions and Restrictions

§ 971.400 General.

(a) *Proposal.* After certification of an application pursuant to Subpart C of this part, the Administrator will proceed with a proposal to issue or transfer a permit for the commercial recovery activities described in the application.

(b) *Terms conditions and restrictions.* (1) Within 180 days after certification (or such longer period as the Administrator may establish for good cause shown in writing), the Administrator will propose terms and conditions for, and restrictions on, the proposed commercial recovery which are consistent with the provisions of the Act and this part as set forth in § 971.418 through § 971.430. Proposed and final TCRs will be uniform in all permits, except to the extent that differing physical and environmental conditions and/or mining methods require the establishment of special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose TCRs in writing to the applicant, and public notice thereof will be provided pursuant to § 971.401. The proposed TCRs will be included with the draft of the EIS on permit issuance.

(2) If the Administrator does not propose TCRs within 180 days after certification, the Administrator will notify the applicant in writing of the reasons for delay and of the approximate date on which the proposed TCRs will be completed.

(c) *Findings.* Before issuing or transferring a commercial recovery permit, the Administrator must make written findings in accordance with the requirements of § 971.403 through § 971.408. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. The Administrator will make a final determination of issuance or transfer of a permit, and will publish a final EIS on that action, within 180 days (or such longer period of time as the Administrator may establish for good cause shown in writing) following the date on which proposed TCRs and the draft EIS are published.

Issuance/Transfer, Modification/Revision; Suspension/Revocation

§ 971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the **Federal Register** notice of each proposal to issue or transfer, including notice of a draft EIS, and of proposed terms and conditions for, and restrictions on, a commercial recovery permit that will be included with the draft EIS [see § 971.400(b)]. Subject to § 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons and affected States will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold the public hearing(s) required by § 971.212(b) in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon. A copy of the notice and draft EIS will be provided to the affected State agency. Information provided by NOAA may be used to supplement information provided by the applicant, however it will not affect schedules for State agency review and decisions with respect to consistency determinations as required in 15 CFR Part 930, Subpart D.

(2) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing, which may be consolidated with a hearing held by another agency, will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and on TCRs for, the permit.

§ 971.402 Consultation and cooperation with Federal and State agencies.

Before issuance or transfer of a commercial recovery permit, the Administrator will conclude any consultations in cooperation with other Federal and State agencies which were initiated pursuant to §§ 971.211 and 971.200(g). These consultations will be held to assure compliance with, as applicable and among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, the Fish and Wildlife Coordination Act, and the Coastal Zone Management Act of 1972, as amended. The Administrator also will consult, before any issuance, transfer, modification or renewal of a permit, with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to the permit could adversely affect any fishery within the Fishery Conservation Zone (now known as the Exclusive Economic Zone), or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond that zone.

§ 971.403 Freedom of the high seas.

(a) Before issuing or transferring a commercial recovery permit, the Administrator must find the recovery proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that commercial recovery of hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each permittee shall act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the commercial recovery program of an applicant or permittee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place such that neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the recovery plan, the Administrator will decide whether to issue or transfer the permit.

§ 971.404 International obligations of the United States.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the

commercial recovery proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 971.405 Breach of international peace and security involving armed conflict.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the recovery proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect, taking into account the analyses and information in any applicable EIS and any TCRs associated with the permit. This finding also will be based upon the requirements in Subpart F. However, as also noted in Subpart F, if a determination on this question cannot be made on the basis of available information, and it is found that irreparable harm will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse environmental effect issue, a permit may be granted, subject to modification or suspension and, if necessary and appropriate, revocation pursuant to § 971.417(a), or subject to emergency suspension pursuant to § 971.417(h).

§ 971.407 Safety at sea.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not pose an inordiante threat to the safety of life and property at sea. This finding will be based on the requirements in § 971.205 and Subpart G.

§ 971.408 Processing outside the United States.

(a) Before issuing or transferring a commercial recovery permit which authorizes processing outside the U.S., the Administrator must find, after the opportunity for an agency hearing required by § 971.212(b), that:

(1) The processing of the quantity concerned of hard mineral resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of the permittee; and

(2) Satisfactory assurances have been given by the permittee that such resources, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(b) At or after permit issuance the Administrator may determine, or revise a prior determination, that the national interest necessitates return to the U.S. of a specified amount of hard mineral resource recovered pursuant to the permit and authorized to be processed outside the United States. Considerations in making this determination may include:

(1) The national interest in an adequate supply of minerals;

(2) The foreign policy interests of the United States; and

(3) The multi-national character of deep seabed mining operations.

(c) As appropriate, TCRs will incorporate provisions to implement the decision of the Administrator made pursuant to this section.

(d) Environmental considerations of the proposed activity will be addressed in accordance with § 971.606(c).

§ 971.409 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a permit if he finds that the applicant or the proposed commercial recovery activities do not meet the rquirements of this part for the issuance or transfer of a permit.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, via certified mail, return receipt requested, and publish in the **Federal Register**, written notice of his intention to deny issuance or transfer. The notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is received by the applicant under paragraph (b) of this section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if the deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, the Administrator will send to the applicant written notice of final denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance or transfer of a permit is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.410 Notice of issuance or transfer.

If the Administrator finds that the requirements of this subpart have been met, he will issue or transfer the permit along with the appropriate TCRs. Notice of issuance or transfer will be made in writing to the applicant and published in the **Federal Register**.

§ 971.411 Objections to terms, conditions and restrictions.

(a) The permittee may file a notice of objection to any TCR in the permit. The permittee may object on the grounds that any TCR is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the permittee does not file notice of an objection within the 60-day period immediately following the permittee's reciept of the notice of issuance or transfer under § 971.410, the permittee will be deemed conclusively to have accepted the TCRs in the permit.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must indicate the legal or factual basis for the objection, and must provide information relevant to any underlying factual issues deemed by the permittee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the **Federal Register**, as well as provide to the permittee, written notice of the decision.

(d) If, after the Administrator takes final action on an objection, the permittee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of this part.

(e) Any final determination by the Administrator on an objection to TCRs in a permit, after the formal hearing provided in paragraph (d), is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.412 Changes in permits and permit terms, conditions, and restrictions.

(a) During the duration of a commercial recovery permit, changes in the permit or its associated commercial recovery plan may be initiated by either the permittee or the Administrator.

(b) A significant change is one which, if approved, would result in:

(1) An increase of more than five percent in the size of the commercial recovery area; or

(2) A change in the location of five percent or more of the commercial recovery area.

(c) A major change is one affecting one or more of:

(1) The bases for certifying the original application pursuant to § 971.301;

(2) The bases for issuing or transferring the permit pursuant to § 971.403 through § 971.408;

(3) The TCRs issued as part of the permit pursuant to § 971.418 through § 971.430; or

(4) The ownership of a permittee (or the membership of the joint venture, partnership or other entity on whose behalf the permit was issued); and which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in paragraphs (c)(1) and (2) of this section;

(ii) The sufficiency of the TCRs to accomplish their intended purpose; or

(iii) The antitrust characteristic of the permittee.

(d) A minor change is one that is clearly more modest in scope than the changes described in paragraph (b) or (c) of this section.

(e) A permittee may not implement a significant or major change, as defined in paragraphs (b) and (c) of this section, until an application for revision of the permit or its associated commercial recovery plan has been approved by the Administrator. However, advance notice of proposed major changes in a permittee's corporate membership or legal structure is not required, unless practicable, but the Administrator expects prompt notification of the occurrence of such a major change.

(f) A proposed significant or major change, as defined in paragraphs (b) and (c) of this section, may trigger the need for additional review, under the Federal consistency provisions of the Coastal Zone Management Act of 1972, as amended.

§ 971.413 Revision of a permit.

(a) During the term of a commercial recovery permit, the permittee may submit to the Administrator an application for a revision of the permit or the commercial recovery plan associated with it to accommodate changes desired by the permittee. In some cases it may be advisable to recognize at the time of filing the original permit application that, although the essential information for issuing or transferring a permit as specified in § 971.201 through § 971.209 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a permit which would authorize commercial recovery activities and plans only to the extent described in the application.

(b) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a significant change, as defined in § 971.412(b), must be followed by the full application procedures in this part, including a public hearing.

(c) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a major change, as defined in § 971.412(c) (See also § 971.425 of this part), will be acted on after notice thereof is published by the Administrator in the **Federal Register** with a 60-day opportunity for public comment and consultation with appropriate Federal agencies.

(d)(1) The Administrator will approve a revision if the Administrator finds in writing that the revision will comply with the requirements of the Act and this part.

(2) Notice of the Administrator's decision on the proposed revision will be provided to the permittee in writing and published in the **Federal Register**.

(e) A permittee may notify the Administrator of minor changes, as defined in § 971.412(d), subsequently in the annual report (See § 971.801 of this part).

(f) If the relative importance of the change is unclear to the permittee, the Administrator should be notified in advance so that the Administrator can decide whether a revision in accordance with § 971.412(e) is required.

§ 971.414 Modification of permit terms, conditions, and restrictions.

(a) After issuance or transfer of any permit, the Administrator, after consultation with appropriate Federal agencies and the permittee, may modify the TCRs in a permit for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the considerations listed in § 971.403;

(2) If relevant data and information (including, but not limited to, data resulting from activities under a permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) A proposal by the Administrator to modify the TCRs in a permit is significant and must be followed by the full application procedures in this part, including a public hearing, if it would result in either of the changes identified in § 971.412(b).

(c) All proposed modifications other than those described in paragraph (b) of this section will be acted on after the Administrator provides:

(1) Written notice of the proposal to the permittee; and

(2) Publication of this proposal in the **Federal Register** with a 60-day opportunity for comment.

(d)(1) The Administrator will effect a modification of the TCRs if the Administrator finds in writing that the proposed modification will comply with the requirements of the Act and this part.

(2) Upon adopting a TCR modification, the Administrator shall issue to the permittee an amended permit including the modified TCRs, and shall publish

notice of issuance in the Federal Register.

(3) The procedures for objection to modification of the TCRs are the same as those for objection to a TCR under § 971.411 of this part.

§ 971.415 Duration of a permit.

(a) Unless suspended or revoked pursuant to §§ 971.406 and 971.417, each commercial recovery permit will be issued for a period of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area listed in the permit.

(b) If the permittee has substantially complied with the permit and its associated recovery plan and requests an extension of the permit, the Administrator will extend the permit with appropriate TCRs, consistent with the Act, for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The Administrator may make allowance for deviation from the recovery plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended recovery plan to govern the activities by the permittee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria specified in paragraphs (a) and (b).

§ 971.416 Approval of permit transfers.

(a) The Administrator may transfer a permit after a written request by the permittee. After a permittee submits a transfer request to the Administrator, the proposed transferee will be deemed an applicant for a commercial recovery permit, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a permit if the proposed transferee is a United States citizen and proposed commercial recovery activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a permittee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

§ 971.417 Suspension or modification of activities; suspension or revocation of permits.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart J of this part, or in addition to the imposition of any fine under Subpart J, suspend or revoke any permit issued under this part, or suspend or modify any particular activities under such a permit, if the permittee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the permit; and

(2) Suspend or modify particular activities under any permit, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situtation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in § 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) the Administrator will publish in the **Federal Register**, and send to the permittee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the permittee can correct:

(i) The action necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date notice is sent to the permittee, under paragraph (c) of this section, unless before the 30th day the permittee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) in which the permittee must correct the deficiency, if such deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (d)(1) is not pending or in progress.

(e) If a timely request for administrative review of the proposed denial is made by the permittee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the permittee, and publish in the **Federal Register**, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of commercial recovery activities by a permittee. The provisions of paragraphs (c), (d), (e) and the first sentence of this paragraph (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension or modification of particular activities under that permit, is necessary for the reasons set forth in paragraph (a)(2); or

(2) The Administrator determines that immediate suspension of such a permit or immediate suspension or modification of particular activities under a permit, is necessary to prevent a significant adverse environmental effect or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 971.1003(d)(4).

(i) The Administrator will immediately rescind the suspension order as soon as he has determined that the cause for suspension has been removed.

Terms, Conditions and Restrictions

§ 971.418 Diligence requirements.

The TCRs in each commercial recovery permit must include provisions to assure diligent development consistent with § 971.503, including a requirement that recovery at commercial scale be underway within ten years from the date of permit issuance unless that deadline is extended by the Administrator for good cause.

§ 971.419 Environmental protection requirements.

(a) Each commercial recovery permit must contain TCRs established by the Administrator pursuant to Subpart F which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment. Factors to be taken into account regarding the potential for significant adverse environmental effects are discussed in §§ 971.601 and 971.602.

(b) Before establishing the TCRs pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. The Administrator also will take into account and give due consideration to formal comments received from the public, including those from the State agency, and to the information contained in the final site-specific EIS prepared with respect to the proposed permit.

§ 971.420 Resource conservation requirements.

For the purpose of conservation of natural resources, each permit issued under this part will contain, as needed, TCRs which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the recovery area. The Administrator will establish these requirements pursuant to § 971.502.

§ 971.421 Freedom of the high seas requirements.

Each permit issued under this part must include appropriate restrictions to ensure that commercial recovery activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. The Administrator will consider the factors in § 971.403 in establishing these restrictions.

§ 971.422 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any permit issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the permit comply with conditions regarding design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to Subpart G of this part.

§ 971.423 Best available technology.

The Administrator will require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, (see §§ 971.203(b)(3), 971.602(f), and 971.604(a)), except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies.

§ 971.424 Monitoring requirements.

Each commercial recovery permit will require the permittee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the permittee in commercial recovery activities to:

(1) Monitor activities at times, and to the extent, the Administrator deems reasonable and necessary to assess the effectiveness of the TCRs of the permit; and

(2) Report to the Administrator whenever those officers or employees have reason to believe there is a failure to comply with the TCRs;

(b) To cooperate with Federal officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the commercial recovery activities in accordance with a monitoring plan approved and issued by NOAA as permit TCRs and to submit data and other information as necessary to permit evaluation of environmental effects. The environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart F.

§ 971.425 Changes of circumstances.

Each permit must require the permittee to advise the Administrator of any changes of circumstances which might constitute a revision which would be a major change under § 971.412(c). Changes in ownership, financing, and use conflicts are examples, as are technology or methodology changes including those which might result in significant adverse environmental effects.

§ 971.426 Annual report and records maintenance.

Each permit will require the permittee to submit an annual report and maintain information in accordance with § 971.801 including compliance with the commercial recovery plan and the quantities of hard mineral resources recovered and the disposition of such resources.

§ 971.427 Processing outside the United States.

If appropriate TCRs will incorporate provisions to implement the decision of the Administrator regarding the return of resources processed outside the United States, in accordance with § 971.408.

§ 971.428 Other necessary permits.

Each permit will provide that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure all other necessary Federal, State, and local permits.

§ 971.429 Special terms, conditions and restrictions.

Although the general criteria and standards to be used in establishing TCRs for a permit are set forth in this part, as referenced in § 971.418 through § 971.428, the Administrator may impose special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 971.430 Other Federal requirements.

Pursuant to § 971.211, another Federal agency, or a State acting under Federal authority, upon review of a commercial recovery permit application submitted under this part, may propose that certain TCRs be added to the permit, to assure compliance with any law or regulation within that agency's area of responsibility. The Administrator will include appropriate TCRs in a permit.

Subpart E—Resource Development

§ 971.500 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, section 103(a)(2)(C) requires a resource assessment to be provided with the recovery plan. Section 103(a)(2)(D) of the Act provides that the applicant will select the size and location of the area of a recovery plan, which will be approved unless the

Administrator finds that the area is not a "logical mining unit" or the commercial recovery activities in the proposed site would result in a significant adverse environmental effect which cannot be avoided by the imposition of reasonable restrictions. Also, pursuant to section 108 of the Act, the applicant's recovery plan and the TCRs of each permit must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each permit is to contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§ 971.501 Resource assessment, recovery plan, and logical mining unit.

(a) The applicant must submit with the application a resource assessment to provide a basis for assessing the area applied for. This assessment must include a discussion of mineable and unmineable areas, taking into account nodule grade, nodule concentration, and other factors such as seafloor topography. These areas may be delineated graphically. The resources in the area must be described in relation to the applicant's production requirements, operating period, and recovery efficiency in order to justify the area applied for.

(b) The applicant shall select the size and location of the area of the recovery plan, which area shall be approved unless the Administrator finds that, among other considerations (see § 971.301(a)), the area is not a logical mining unit. In the case of a commercial recovery permit, a logical mining unit is an area of the deep seabed:

(1) In which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(2) Which is not larger than necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(3) In relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(c) Approval by the Administrator of a proposed logical mining unit will be based on a case-by-case review of each application. The area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit.

(d) In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

§ 971.502 Conservation of resources.

(a) If the Administrator establishes terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the recovery activities, economic and resource data, and the national need for hard mineral resources.

(b) The application must set forth how the applicant's proposed method of collecting nodules will conserve resources by providing for the future opportunity for commercial recovery of the unrecovered balance of the resources in the proposed permit area. Although preliminary and subject to change, the discussion must include a plan for the chronology of areas to be mined. This is needed in order for the Administrator to determine if selective mining, expected to be carried out in the early years to improve cash flow, is part of a long range recovery plan.

(c) If the applicant proposes a refining process that does not include the use of manganese in a productive manner, it may not render the manganese unavailable to future users by dispersing the tailings over a vast area unless such a scheme is necessary for the financial practicability of the commercial recovery activities of the applicant. A permittee must advise the Administrator in the annual report of the location, composition and quantity of manganese in tailings which remain after processing. Should national needs for manganese develop during the duration of a permit, e.g., in case of national emergency, the Administrator may cancel the exception granted involving dispersion of tailings. Applicants seeking an exception would be required to demonstrate how and in what time frame their commercial recovery processing activities could be modified to respond to new national needs.

§ 971.503 Diligent commercial recovery.

(a) Each permittee must pursue diligently the activities described in its approved commercial recovery plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. Permit TCRs will require periodic reasonable expenditures for commercial recovery by the permittee, taking into account the size of the area of the deep seabed to which the recovery plan applies and the amount of funds estimated by the Administrator to be required to initiate commercial recovery of hard mineral resources within the time limit established by the Administrator. However, required expenditures will not be established at a level which would discourage commercial recovery or operational efficiency.

(b) To meet the diligence requirement, the applicant must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 971.203(b)(2). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can reasonably develop the resources in the permit area within the term of the permit. There must be a reasonable relationship between the size of the recovery area and the financial and technological resources reflected in the application. The permittee must initiate the recovery of nodules in commerical quantities within ten years of the issuance of the permit unless this deadline is extended by the Administrator for good cause.

(c) Once commercial recovery is achieved, the permittee must, within reasonable limits and taking into consideration all relevant factors, maintain commercial recovery throughout the period of the permit. However, the Administrator will, for good cause shown, authorize temporary suspension of commercial recovery activities. The duration of any suspension will not exceed one year, unless the Administrator determines that conditions justify an extension of the suspension.

(d) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the permittee's reasonable conformance to the approved recovery plan. This determination, however, will take into account the need for some degree of flexibility in a recovery plan. It also will include consideration of the needs and stage of development of the

permittee based on the approved recovery plan; legitimate periods of time when there is no or very low expenditure; and allowance for a certain degree of flexibility for changes encountered by the permittee in market conditions or other factors.

(e) The permittee must submit a report annually reflecting its conformance to the schedule of activities and expenditures contained in the permit and its associated recovery plan. In case of any changes requiring a revision to an approved permit and recovery plan, the permittee must advise the Administrator in accordance with § 971.413.

Subpart F—Environmental Effects

§ 971.600 General.

The Act contains several provisions which relate to environmental protection. For example, section 105(a)(4) requires that, before the Administrator may issue a commercial recovery permit, he must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect. In addition, each permit issued must contain TCRs which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment (section 109(b)). The Act also provides for modification by the Administrator of any TCR if relevant data and information indicate that modification is required to protect the quality of the environment (section 105(c)(1)(B)). The Administrator also may order an immediate suspension or modification of activities (section 106(c)), or require use of best available technologies (section 109(b)), to prevent a significant adverse environmental effect. Furthermore, each permit issued under the Act must require the permittee to monitor the environmental effects of commercial recovery activities in accordance with guidelines issued by the Administrator, and to submit information the Administrator finds necessary and appropriate to assess environmental effects and to develop and evaluate possible methods of mitigating adverse effects (section 114).

§ 971.601 Environmental requirements.

Before issuing a permit for the commercial recovery of deep seabed hard mineral resources, the Administrator must find that:

(a) The issuance of a permit cannot reasonably be expected to result in a significant adverse environmental effect, or, if there is insufficient information to make that determination, that no irreparable harm will result during a period when monitoring of commerical recovery is undertaken to gather sufficient information in order to determine the potential for or occurrence of any significant adverse environmental effect. In examining this issue, NOAA will give consideration to the following Ocean Discharge Criteria of the Clean Water Act (40 CFR Part 125, Subpart M), as they may pertain to discharges and other environmental perturbations related to the commercial recovery operations:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act; and

(b) The applicant has an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it.

§ 971.602 Significant adverse environmental effects.

(a) *Determination of significant adverse environmental effects.* The Administrator will determine the potential for or the occurrence of any significant adverse environmental effect or impact (for the purposes of sections 103(a)(2)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case-by-case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements, NOAA-collected data, monitoring results, and other data provided by the applicant or permittee, as well as consideration of the criteria in § 971.601(a).

(c) *Related considerations.* In making a determination the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant adverse environmental effect.* NOAA believes that exploration-type activities, as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse environmental effects.* NOAA research has identified at-sea testing of recovery equipment, the recovery of manganese nodules in commercial quantities from the deep seabed, and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant adverse envirnomental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to § 971.419), mitigation (pursuant to § 971.419), or best available technology requirements (pursuant to § 971.423), as appropriate, and monitoring requirements (pursuant to § 971.424) to acquire more information on the environmental effects of deep seabed mining.

§ 971.603 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to assure compliance with the environmental protection requirements of this part.

(b) The monitoring plan shall include a characterization of the proposed mining system in terms of collector contact, benthic discharge and surface discharge.

(c) The monitoring plan shall include determination of (1) the spatial and

temporal characteristics of the mining ship discharges; (2) the spatial extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(d) The monitoring of benthic impact shall involve the study of two types of areas, each selected by the permittee in consultation with NOAA, which areas shall be representative of the environmental characteristics of the permittee's site:

(1) An impact reference area, located in a portion of a permit area tentatively scheduled to be mined early in a commercial recovery plan; and

(2) An interim preservational reference area, located in a portion of a permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan.

Reference areas may be selected provisionally prior to application for a commercial recovery permit.

(e) The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:

(1) Discharges—

(i) Salinity, temperature, density.

(ii) Suspended particulates concentration and density.

(iii) Particulate and dissolved nutrients and metals.

(iv) Size, configuration, and velocities of discharge.

(2) Upper water column—

(i) Nutrients.

(ii) Endangered species (observations).

(iii) Salinity, temperature, density.

(iv) Currents and direct current shear.

(v) Vertical distribution of light.

(vi) Suspended particulate material advection and diffusion.

(vii) In-situ settling velocities of suspended particulates.

(viii) Zooplankton and trace metals uptake.

(ix) Fish larvae.

(x) Behavior of biota, including commercially and recreationally valuable fish.

(3) Lower water column and seafloor—

(i) Currents.

(ii) Suspended particulate material advection and diffusion.

(iii) In-situ settling velocities of suspended particulates.

(iv) Benthic scraping and blanketing, and their impacts and recovery.

(f) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite, where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

(g) After the Administrator's approval of the monitoring plan, this plan will become a permit TCR. The monitoring plan TCR will include, to the maximum extent practicable, identification of those activities or events that could cause suspension or modification due to environmental effects under § 971.417, or permit revocation in the event that these effects cannot be adequately mitigated. The TCR also will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations or to incorporate recent research or monitoring results.

(h) If test mining is proposed, the applicant shall include in the monitoring plan a monitoring plan for the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery. This monitoring shall address concerns expressed in the PEIS and in the permit EIS.

(i) The monitoring plan shall include a sampling strategy that assures: that it is based on sound statistical methods, that equipment and methods be scientifically accepted, that the personnel who are planning, collecting and analyzing data be scientifically well qualified, and that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center and other formats as may be specified by the Administrator.

(j) Pursuant to section 114(1) of the Act, the Administrator intends to place observers onboard mining vessels, not only to ensure that permit TCRs are followed, but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (See § 971.1005), and if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to § 971.414, or the regulations pursuant to § 971.804.

§ 971.604 Best available technologies (BAT) and mitigation.

(a) The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Because of the embryonic nature of the industry, NOAA is unable either to specify particular equipment or procedures comprising BAT or to define performance standards. Until such experience exists, the applicant shall submit such information as is necessary to indicate, as required above, the use of BAT, the alternatives considered to the specific equipment or procedures proposed, and the rationale as to why one alternative technology was selected in place of another. This analysis shall include a discussion of the relative costs and benefits of the technologies considered.

(b) NOAA is not specifying particular mitigation methodologies or techniques at this time (such as requiring the sub-surface release of mining vessel discharges), but expects applicants and permittees to develop and carry out their operations, to the extent possible, to minimize adverse environmental effects and to be able to demonstrate efforts to that end. The applicant must submit a plan describing how he would mitigate a problem, if it were caused by the surface release of mining vessel discharges, including a plan for the monitoring of any discharges. Based upon monitoring results, NOAA may find it necessary in the future to specify particular procedures for minimizing adverse environmental effects. These procedures would be incorporated into permit TCRs.

(c) NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharges, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are factors of concern to NOAA. In reporting any such change, the permittee shall submit information to indicate the use of BAT, alternatives considered, and rationale for selecting one technology in place of another, in a manner comparable to and to the extent required in paragraph (a) of this section. If proposed changes have a high potential for increasing adverse environmental effects, the Administrator

may disapprove or require modification of the changes.

§ 971.605 Stable Reference Areas. [Reserved]

§ 971.606 Onshore information.

(a) To assist the Administrator in complying with NEPA requirements and to enable NOAA to function as lead agency in preparing permit site-specific environmental impact statements (EISs) and facilitating the preparation and processing of other environmental documents and permits, the applications must include the following information:

(1) The location and affected environment of port, transport, processing and waste disposal facilities and associated facilities (e.g., maps, land use and layout);

(2) A description of the environmental consequences and socio-economic effects of construction and operation of the facilities, including waste characteristics and toxicity;

(3) Any mitigating measures that may be proposed;

(4) Certification of consistency with the federally approved State coastal management program, where applicable, and evidence of the status of compliance with other State or local requirements relating to protection of the environment; and

(5) Alternative sites and technologies considered by the applicant and the considerations which eliminate their selection.

(b) The applicant must consult with NOAA as early as possible concerning the information to be submitted to NOAA to prepare an adequate environmental impact statement. The applicant is encouraged to consult with potentially affected States as early as is practicable [see also § § 971.200(g) and 971.213].

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant, in accordance with Executive Order 12114 which requires the environmental review of major Federal actions abroad. Information detailing the socio-economic impacts of foreign processing activities is not required.

Subpart G-Safety of Life and Property at Sea

§ 971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea (section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

§ 971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast Guard Certificate of Inspection (pursuant to § 971.205(a)). United States flag vessels are under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in § 971.205(b) apply.

Subpart H—Miscellaneous

§ 971.800 General.

The subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

§ 971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR Part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR Part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license or permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in Section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see § 971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see § 971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes which do not constitute revisions (see § 971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§ 971.426) and discuss manganese conservation measures (see § 971.502).

§ 971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR Part 970 may request that certain information not be subject to public disclosure. The substantiation requested is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part or 15 CFR Part 970, which information is considered by that person to be

protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the Administrator give the information confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant, licensee or permittee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to the Administrator in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(4) Normally, the Administrator will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may make a determination in advance of a request, where it would facilitate obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment, which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedure described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possesses, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the seventh working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform that person that by a date the Administrator specifies (generally, not later than the close of business on the seventh working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if this statement was not previously submitted;

(B) Is strongly encouraged to deliver to the Administrator an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) agruments against disclosure of the information; and

(iv) Inform that person that the burden is on him to assure that any response to the notice is delivered to the Administrator within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all or of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the General Counsel for the Department of Commerce, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information.

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That the final agency action is subject to judicial review under Chapter 7 of Title 5, United States Code; and

(iv) That on the seventh working day after issuance of the notice described in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless the Administrator has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) The Administrator will keep a record of the date any notice is issued and the date any response is received, by the Administrator, under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if ten working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submission of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secret Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

(g) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 971.803 Relinquishment and surrender of licenses and permits.

(a) Any licensee or permittee may at any time, without penalty:

(1) Surrender to the Administrator a license or permit issued to the licensee or permittee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

(b) Any licensee or permittee who surrenders, or relinquishes any right under, a license or permit will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under the license or permit.

§ 971.804 Amendment to regulations for conservation, protection of the environment, and safety of life and property at sea.

The Administrator may amend the regulations in this part and 15 CFR Part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR Part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing license or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in Subpart I of this part.

§ 971.805 Computation of time.

Except where otherwise specified, Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part or 15 CFR Part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

Subpart 1—Uniform Procedures

§ 971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR Part 970:

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more

specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition or restriction in a license or permit, or to modification thereto, where the licensee or permittee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee or permittee for review of:

(1) A proposed denial of issuance or transfer of a license or permit; or

(2) A proposed suspension or modification of particular activities under a license or permit after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 971.302 or 15 CFR 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with 15 CFR Part 970, Subpart C to determine priority of right among preenactment explorers.

§ 971.901 Formal hearing procedures.

(a) *General.* (1) All hearings described in § 971.900 are governed by Subpart C of 15 CFR Part 904, as modified by this section. The rules in this subpart take precedence over 15 CFR Part 904, Subpart C, to the extent there is a conflict.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(3) For the purposes of this subpart, "involved applicant, licensee or permittee" means an applicant, licensee or permittee the status of whose application, license, permit or activities conducted under the license or permit may be altered by the Administrator as a result of proceedings under this subpart.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provisions of this part or 15 CFR Part 970, he will provide for a formal hearing. Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the Department of Commerce Office of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(c) *Notice of formal hearing.* (1) The Administrator will publish notice of the formal hearing in the Federal Register at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant, licensee or permittee and to all persons who submitted written comments upon the action in question, or who testified at any prior informal hearing on the action or who filed a request for the formal hearing under this part or 15 CFR Part 970.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing and the name of the presiding judge, as determined under paragraph (b) of this section;

(ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(d) *Powers and duties of the administrative law judge.* In addition to the powers enumerated in 15 CFR Part 904, Subpart C, judges will have the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation; and

(3) Require at or prior to any hearing, the submission and exchange of evidence.

(e) *Argument.* At the close of the formal hearing, each party will be given the opportunity to submit written arguments on the issues before the judge.

(f) *Hearing Participation.*

(1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) Any involved applicant, licensee or permittee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within ten days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the ten days, but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within ten days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the ten day rule for good cause, such as if the interested person, making this request after the expiration of the ten days, the formal hearing, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) below.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* (1) Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(2) Whenever a formal hearing is conducted pursuant to a request by an applicant, licensee or permittee for review of a denial of certification, issuance or transfer of a license or permit in accordance with section 106(a)(4) of the Act, or pursuant to an objection to any term, condition, or restriction in a permit in accordance with section 105(b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not previously raised in the administrative proceedings on the action pursuant to any such section, unless the judge determines that good cause is shown for the failure to raise them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues at a prior stage in the administrative process, or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(h) *Decisions.* (1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within ten days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within ten days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* (i) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material isuses of law, and a recommendation as to the appropriate action to be taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(ii) Within thirty days after the date the recommended decision is served, any party may file with the Administrator exceptions to the recommended decision. The exceptions must refer to all portions of the record and to all authorities relied on in support of the exceptions.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision. The Administrator shall assure that the record shows the ruling on each exception presented.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

(i) *Filing and service of documents.* (1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins at the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certficate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

Subpart J—Enforcement

§ 971.1000 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed $25,000 for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license or permit, or suspend or modify activities under a license or permit, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee or permittee under the Act to monitor compliance and environmental effects of activities under the license or permit.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§ 971.1001–§ 971.1002), and license and permit sanctions (§ 971.1003); the remission or mitigation of forfeitures (§ 971.1004); observers (§ 971.1005); protection of certain information related to enforcement (§ 971.1006); and

procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§ 971.1007).

(b) *Filing and service of documents.* (1) Except as otherwise provided by this subpart, filing and service of documents required by this subpart will be in accordance with § 971.901(i). The method for computing time periods set forth in § 971.901(i) also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within ten days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

§ 971.1001 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

§ 971.1002 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for a hearing timely filed under 15 CFR 904.102, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the Department of Commerce, Office of Administrative Law Judges.

(b) Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

§ 971.1003 License and permit sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license or permit issued under the Act, or the suspension or modification of any particular activity or activities under a license or permit, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license or permit issued under the Act, or any particular activity or activities under such a license or permit, if the licensee or permittee substantially fails to comply with any provision of the Act, any regulation or order issued under the Act, or any term, condition, or restriction in the license or permit.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license or permit issued under the Act:

(1) Revoke the license or permit;

(2) Suspend the license or permit, either for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify any activity under the license or permit, as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NoS) setting forth the sanction to be imposed and the basis therefore. The NoS will state:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license or permit, or order allegedly violated;

(iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee or permittee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee or permittee under paragraph (e)(1) to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective as provided in the final decision of the Administrator issued pursuant to paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NoS will be served personally or by registered or certified mail, return receipt requested, on the licensee or permittee. The Administrator will also publish in the **Federal Register** a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NoS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

(i) Prevent a significant adverse environmental effect; or

(ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4), the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NoS will be accompanied by a copy of this subpart and the applicable provisions of 15 CFR Part 904 and 15 CFR Part 971 Subpart I.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NoS, the Administrator will determine whether the reason for the proposed sanction is a deficiency which the licensee or permittee can correct. Such determination, and the basis therefor, will be set forth in the NoS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee or permittee can correct, the Administrator will allow the licensee or permittee a reasonable period of time, up to 180 days from the date of the NoS, to correct the deficiency. The NoS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee or permittee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee or permittee may, within the time period prescribed by the Administrator under paragraph (e)(2) of the section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, the request will be considered denied.

(4) When the licensee or permittee believes that the deficiency has been corrected, the licensee or permittee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee or permittee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee or permittee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee or permittee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee or permittee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee or permittee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee or permittee has 30 days from receipt of the NoS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing in which the licensee or permittee has had an opportunity to participate.

(2) If the licensee or permittee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NoS. The request shall either attach a copy of the relevant NoS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NoS and any response thereto to the Department of Commerce Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the licensee or permittee, with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleading and other documents must be filed directly with the Department of Commerce Office of Administrative Law Judges, and a copy must be served on the opposing party (respondent or agency representative).

(2) Except as provided in this section, the hearing and appeal procedures in 15 CFR Part 904 Subpart C apply to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative Law Judge orders differently.

(4) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will file with the Administrator a recommended decision prepared in accordance with § 971.901(h)(2).

(5) The Administrator will issue a final decision in accordance with § 971.901(h)(3). The decision will be a final order of the Administrator.

(6) The Administrator will serve notice of the final decision on the licensee or permittee in the manner described by paragraph (d)(3) of this section.

§ 971.1004 Remission or mitigation of forfeitures.

(a) Authorized enforcement officers are empowered by section 304 of the Act to seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of the Act, if necessary to prevent evasion of the enforcement of this Act, or of any regulation, order or license or permit issued pursuant to the Act. Enforcement agents may also seize illegally recovered or processed hard mineral resources, as well as other evidence related to a violation. Section 306 of the Act provides for the judicial forfeiture of vessels and hard mineral resources.

(b) Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

(c) Unless otherwise directed in a notice concerning the seized property, a petition for relief from forfeiture under the Act and pursuant to 15 CFR 904.506(b) shall be addressed to the Administrator and filed with the Ocean Minerals and Energy Division at the address specified in § 971.200(b).

§ 971.1005 Observers.

(a) *Purpose of observers.* Each licensee and permittee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board and accompany any vessel used by the licensee or permittee in exploration or commercial recovery activities (hereafter referred to in this section as a "vessel"), for the purpose of observing, evaluating and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license or permit;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license or permit terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's or permittee's activities under the license or permit.

(b) *Notice to licensee or permittee.* (1) If the Administrator plans to place an observer aboard a vessel, the Administrator will so notify the affected licensee or permittee.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator will include, among other things:

(i) The name of the observer, if known at the time notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel;

(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring;

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(D) Planned tests of alternative operating procedures or technologies for mitigation of environmental effects.

(iv) Information concerning the equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Initial monitoring period.* The Administrator shall require the placement of an observer on each permittee's mining vessel(s) at least once during the initial year of the permittee's commercial recovery activities.

(d) *Licensee's and permittee's responsibilities for observer placement.*

(1) Upon request by the Administrator, a licensee or permittee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next voyage, or, if the vessel is at sea, suggesting a time and method for transporting the observer to the vessel.

(2) In addition, the licensee or permittee shall notify NOAA of the date of departure of planned cruises 60 days in advance of ship departure from port for purposes of NOAA's determination of whether to place Federal observers onboard. If cruise plans are changed by more than 30 days from the date stated by the exploration or commercial recovery plan, the licensee or permittee shall notify NOAA as soon as such changes are made, or 90 days prior to the previously scheduled departure.

(e) *Duties of licensee, permittee, owner or operator.* Each licensee, permittee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(f) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be planned and carried out in a manner that minimizes interference with the licensee's or permittee's activities under the license or permit.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew, or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee or permittee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(g) *Non-interference with observer.* Licensees, permittees and other persons are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(h) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee or permittee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee or permittee an opportunity:

(1) To review those parts of the observer's report which may contain proprietary information; and

(2) To request confidential treatment of such information under § 971.802.

§ 971.1006 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in commercial recovery will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under 15 CFR Part 904 Subpart C, or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purpose of the Act.

§ 971.1007 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States District Court under Section 117 of the Act against any person for alleged violation of the Act, or any regulation, or license or permit term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license or permit allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Action against the Administrator.* (1) No civil action may be filed in a United States District Court under Section 117 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or permit believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

The authority citation for 15 CFR Part 970 continues to read as follows:

Authority: 30 U.S.C. 1401 *et seq.*

1. In the table of contents for 15 CFR Part 970, the entry for Subpart I is revised and Subparts J and K are removed and reserved to read as follows:

Subpart I—Miscellaneous

Sec.
970.900 Other applicable regulations

Subparts J and K—[Reserved]

§ 970.200 [Amended]

2. In § 970.200, paragraph (f) is revised to read as follows:

* * * * *

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to 15 CFR 971.802.

3. In § 970.212, paragraphs (a) and (b)(2) are revised to read as follows:

§ 970.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the **Federal Register**, for each application for an exploration license, notice that such application has been received. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) * * *

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of 15 CFR Part 971. The record

developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

* * * * *

4. In § 970.302, paragraph (j) is amended by revising paragraph (j)(1)(i) introductory text, and paragraph (j)(1)(i)(A) to read as follows:

§ 970.302 Procedures and criteria for resolving conflicts.

* * * * *

(j) *Unresolved domestic conflict* (1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with Subpart I of 15 CFR Part 971, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested person pursuant to 15 CFR 971.901 (f)(2) or (f)(3); and

* * * * *

§ 970.407 [Amended]

In § 970.407, paragraph (d) is revised to read as follows:

* * * * *

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

6. In § 970.501, paragraphs (a) and (b)(2) are revised to read as follows:

§ 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the **Federal Register** notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) * * *

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of 15 CFR Part 971. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for the license.

* * * * *

§ 970.508 [Amended]

7. In § 970.508, paragraph (d) is revised to read as follows:

* * * * *

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

§ 970.510 [Amended]

8. In § 970.510, paragraph (d) is revised to read as follows:

* * * * *

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of 15 CFR Part 971.

9. In § 970.511, paragraphs (a)(1), (b), (e) and (i)(2) are revised to read as follows:

§ 970.511 Suspension or modification of activities; suspension or revocation of licenses.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart J of 15 CFR Part 971, or in addition to the imposition of any fine under Subpart J, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

* * * * *

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in 15 CFR 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

* * * * *

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

(i) * * *

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 971.1003(d)(4).

* * * * *

10. In Subpart I, § 970.900 is revised and §§ 970.901 through 970.906 are removed, to read as follows:

§ 970.900 Other applicable regulations.

The regulations in Subparts H, I and J of 15 CFR Part 971 are consolidated regulations and are applicable both to licenses under this part and to permits under 15 CFR Part 971. The regulations in Subparts H, I and J of Part 971 govern records to be maintained and information to be submitted by licensees and permittees, public disclosure of documents received by NOAA, relinquishment and surrender of licenses and permits, amendment of regulations, competition of time, uniform hearing procedures, and enforcement under the Act.

Subparts J and K—[Removed and Reserved]

11. Subparts J and K (§§ 970.1000–970.1107) are removed and reserved.

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Friday
January 6, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 866 et al.

Medical Devices; Intent To Initiate Proceedings To Establish the Effective Date of the Requirement for Premarket Approval for 31 Class III Preamendments Devices; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, and 890

[Docket No. 88N-0244]

Medical Devices; Intent To Initiate Proceedings To Establish the Effective Dates of the Requirement for Premarket Approval for 31 Class III Preamendments Devices

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to initiate proceedings to establish the effective dates of the requirement for premarket approval for 31 class III preamendments devices. The devices subject to this notice were distributed commercially before May 28, 1976, or are devices that FDA has determined to be substantially equivalent to such devices. This notice of intent identifies the 31 class III preamendments devices to which FDA has assigned a high priority for the application of premarket approval requirements. FDA is taking this action under the Medical Device Amendments of 1976.

DATE: Comments may be submitted at any time. FDA will consider any comments received during its implementation of the premarket approval requirements with respect to class III preamendments devices.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On May 28, 1976, the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) became law. Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three classes of devices depending upon the level of regulatory control needed to provide reasonable assurance of the device's safety and effectiveness. A class I device is a device for which the general controls authorized by or under various sections of the act are sufficient to provide reasonable assurance of the safety and effectiveness of the device. A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device and for which there is sufficient information to establish a performance standard to provide such assurance. A class III device is a device that cannot be classified into class I or class II and that is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health or that presents a potential unreasonable risk of illness or injury. For a device in class III, premarket approval is required in accordance with section 515 of the act (21 U.S.C. 360e) and 21 CFR Part 814 to provide reasonable assurance of the safety and effectiveness of the device.

This notice refers to both devices that were marketed before May 28, 1976, and devices that were not marketed before then, but that are substantially equivalent to devices marketed before then, as preamendments devices. A preamendments device that has been classified into class III requires premarket approval only after FDA requires such approval under a final regulation promulgated under section 515(b) of the act. Under procedures in section 513 of the act (21 U.S.C. 360c), FDA has classified about 1,550 preamendments devices into class I, class II, or class III. These classifications are codified in 21 CFR Parts 862 through 892. FDA's classifications of preamendments devices are based on recommendations of advisory committees (panels) (see 21 CFR Part 14). A listing of the device panels is in 21 CFR 14.100.

Of these 1,550 codified classifications, FDA placed 135 devices into class III. In each of the codified regulations for devices classified into class III, FDA: (1) Declares the effective date of the requirement for premarket approval of the device, if any, and (2) provides a cross-reference to a regulation in Subpart A of that part that provides a summary description of FDA's procedures for establishing the effective date of the requirement for premarket approval for a device. For convenience of readers of this notice, FDA is providing the procedures codified at 21 CFR 888.3 as an example.

§ 888.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(l) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under

section 515 of the act before commercial distribution.

As noted in paragraph (c) of § 888.3 above, a preamendments device subject to the transitional provisions of section 520(l) of the act (21 U.S.C. 360j(l)) is classified into class III without any grace period by action of the statute, and it is unnecessary for FDA to promulgate a rule under section 515(b) of the act for preamendments class III transitional devices.

Priorities for Requiring Premarket Approval of Class III Devices

FDA has classified 135 preamendments devices into class III under section 513(d) of the act (21 U.S.C. 360c(d)). The issuance of regulations under section 515(b) of the act for all of these devices will take many years, given the existing agency resources available for this activity. Recognizing that FDA could not issue regulations under section 515(b) of the act for all preamendments class III devices simultaneously, Congress, in section 513(d)(3) of the act, expressly authorized FDA to establish priorities which, in its discretion, are to be used in applying section 515 of the act to such devices. Furthermore, in section 513(c)(2)(A) of the act, Congress directed that where a panel has recommended classification of a device into class III, the panel shall, to the extent practicable, recommend the assignment of a priority for applying the requirements of section 515 of the act to the device. The panels recommended that a high priority be assigned to 63 of the 135 devices classified into class III.

In exercising its statutory authority to establish priorities for the issuance of regulations under section 515(b), FDA takes into account the following factors:

1. The recommendations on priority of the agency's advisory panels.

2. The present and projected use of the device.

3. The significance of the device to the public health.

4. The demonstrated, potential, or foreseeable risks of illness or injury associated with use of the device.

5. The seriousness of questions concerning the effectiveness of the device.

6. The extent to which valid scientific evidence developed since classification of the device and submitted to or otherwise brought to the agency's attention tends to support or undermine the basis for the classification.

7. The existence of a petition for reclassification of the device provided the agency tentatively concludes that the device should be reclassified.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA issued a notice of intent to require premarket approval for 13 preamendments class III devices. FDA has published final rules requiring premarket approval of 7 of these devices and published a proposed rule for 1 more device. Three of these devices are the subject of reclassification petitions and FDA is considering reclassifying these devices. FDA has not yet taken any action on 2 of the 13 devices, the pacemaker programmer and the implantable pacemaker pulse generator, because it does not have the resources necessary to review PMA's for these devices. FDA, however, has taken other steps to assure the safety and effectiveness of pacemakers such as issuance of the pacemaker registry regulation (52 FR 27756; July 23, 1987).

Final classification regulations for preamendments class III devices in 16 medical specialties have been issued. Using the factors set out above, FDA has reviewed the class III preamendments devices in each of the 16 specialties to determine which of those devices warrant immediate consideration for development of proposed regulations under section 515(b) of the act to require premarket approval. The devices that FDA has determined to have a high priority for regulations under section 515(b) of the act are listed below under the medical specialty in which they are classified.

Section or FR cite	Classification name of device
Part 866—Immunology and Microbiology Devices	
1. § 866.3305	Herpes simplex virus serological reagents.
2. § 866.3510	Rubella virus serological reagents.
Part 868—Anesthesiology Devices	
3. § 868.5400	Electroanesthesia apparatus.
4. § 868.5610	Membrane lung for long-term pulmonary support.
Part 870—Cardiovascular Devices	
5. § 870.3450	Vascular graft prosthesis of less than 6 millimeters diameter.
6. § 870.3535	Intra-aortic balloon and control system.
Part 872—Dental Devices	
7. § 872.3640	Endosseous implant.
8. § 872.6730	Endodontic dry heat sterilizer.
Part 874—Ear, Nose, and Throat Devices	
9. § 874.3850	Endolymphatic shunt tube with valve.
Part 876—Gastroenterology-Urology Devices	
10. § 876.3750	Testicular prosthesis.
11. § 876.4480	Electrohydraulic lithotripter.
Part 878—General and Plastic Surgery Devices	
12. § 878.3530	Silicone inflatable breast prosthesis.
13. § 878.3540	Silicone gel-filled breast prosthesis.
Part 880—General Hospital and Personal Use Devices	
14. § 880.5760	Chemical cold pack snakebite kit.
Part 882—Neurological Devices	
15. § 882.5800	Cranial electrotherapy stimulator.
Part 884—Obstetrical and Gynecological Devices	
16. § 884.1185	Endometrial washer.
17. § 884.4100	Endoscopic electrocautery and accessories.
18. § 884.5940	Powered vaginal muscle stimulator for therapeutic use.
Part 886—Ophthalmic Devices	
19. § 886.3400	Keratoprosthesis.
20. § 886.3920	Eye valve implant.
Part 888—Orthopedic Devices	
21. § 888.3480	Knee joint femorotibial metallic constrained cemented prothesis.
22. § 888.3540	Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.
23. § 888.3550	Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis.
24. § 888.3570	Knee joint femoral (hemi-knee) metallic uncemented prosthesis.
25. § 888.3580	Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis when intended for uses other than treatment of degenerative and posttraumatic patellar arthritis.
26. § 888.3640	Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.
27. § 888.3650	Shoulder joint metal/polymer, non-constrained cemented prosthesis.
28. § 888.3660	Shoulder joint metal/polymer, semi-constrained cemented prosthesis.
29. § 888.3680	Shoulder joint glenoid (hemi-shoulder), metallic cemented prosthesis.
Part 890—Physical Medicine Devices	
30. § 890.3610	Rigid pneumatic structure orthosis.
31. § 890.3890	Stair-climbing wheelchair.

As soon as practicable, FDA intends to publish proposed and final regulations under section 515(b) of the act for each of these 31 devices. FDA has examined the economic impact of these regulations. The analysis has been placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Ramifications for Manufacturers and Importers

The act does not include a provision for an extension of the 90-day period after promulgation of a final regulation under secton 515(d) within which a PMA or a notice of completion of a PDP is

required to be filed. The House report on the amendments stated that "the thirty month grace period afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. No. 94–853. 94th Cong. 2d Sess. 42 (1976). Thus, "(i)f manufacturers and importers of class III devices initiate investigations only upon promulgation of the regulation requiring premarket approval, they risk having inadequate time to submit an approvable application of PDP. In such cases, there devices would be required to be removed from the market." Id. In addition, section 515(d)(1)(B)(i) of the act provides that FDA may not enter into an agreement to extend the 180-day period in which to take action with respect to a PMA submitted for a device subject to a final regulation under section 515(b) unless the agency finds that "the continued availability of the device is necessary for the public health."

Interested persons may submit written comments regarding this notice to the Document Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–116 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

federal register

Friday
January 6, 1989

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Notice of Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Notice of Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service issues a revised notice identifying vertebrate and invertebrate animal taxa, native to the U.S., being considered for possible addition to the List of Endangered and Threatened Wildlife. The Service emphasizes that this notice is not a proposal for such addition and that the involved taxa do not receive substantive or procedural protection pursuant to the Endangered Species Act of 1973, as amended, as a result of this action. The Service does, however, encourage Federal agencies and other appropriate parties to take these taxa into account in environmental planning. Also identified in this notice (in "category 3") are animal taxa that were previously under consideration for listing, but that are currently presumed either to be extinct, to not be valid species or subspecies, or to be more abundant and/or widespread than previously thought, and not subject to substantial threats to their continued existence.

DATES: Comments may be submitted until further notice.

ADDRESSES: Interested parties are requested to submit comments to the appropriate Regional Director(s) listed below or to: Director (AFWE), U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials relating to this notice will be available for public inspection, by appointment, in the Regional Offices listed below and in the Division of Endangered Species and Habitat Conservation, 1000 North Glebe Road, Arlington, Virginia. Information relating to particular taxa may be obtained from the Endangered Species Coordinator(s) in the appropriate Regional Offices, as listed below:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and Trust Territory of the Pacific Islands.

Regional Director (FWE-SE), U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6150 or FTS 429–6150).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (FWE/SE), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–2321 or FTS 474–2321).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (AE/SE), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725–3276 or FTS 725–3276).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.

Regional Director (FWE), U.S. Fish and Wildlife Service, The Richard B. Russell Federal Building, Suite 1276, 75 Spring Street SW., Atlanta, Georgia 30303 (404/221–3583 or FTS 242–3583).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (FWE), U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158 (617/965–5100 ext. 316 or FTS 829–9316).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (FWE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236–7398 or FTS 776–7398).

Region 7. Alaska.

Regional Director (FWE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503 (907/786–3505 or FTS 786–3505).

FOR FURTHER INFORMATION CONTACT: Endangered Species Coordinator(s) in the appropriate Regional Office(s), or Mr. William Knapp, Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires determination of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. For many years, the U.S. Fish and Wildlife Service has been gathering data on taxa of animals (fishes, amphibians, reptiles, birds, mammals, sponges, crustaceans, arachnids, insects, snails, and bivalve mollusks), native to the United States, that have appeared, at least at times, to merit consideration for addition to the List of Endangered and Threatened Wildlife. The accompanying table identifies many of these taxa (including, by definition, biological subspecies and certain populations of vertebrate animals) and assigns each to one of the three categories described below. Unless it is the subject of a current published proposed or final rule determining endangered or threatened status, none of these taxa receives substantive or procedural protection pursuant to the Act (those species that are the subject of a proposed or final rule are removed from this list at each periodic updating).

Category 1 in this list comprises taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. Proposed rules have not yet been issued because they have been precluded at present by other listing activity. Development and publication of proposed rules on these taxa are anticipated, however, and the Service encourages Federal agencies and other appropriate parties to give consideration to such taxa in environmental planning.

Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The Service emphasizes that these taxa are not being proposed for listing by this notice, and that there are not specific plans for such proposals unless additional information becomes available. Further biological research and field study may be needed to ascertain the status of taxa in this category, and it is likely that many will be found not to warrant listing. The Service hopes that this notice will encourage investigation of the status and vulnerability of these taxa, and consideration of them in the course of environmental planning.

Category 3 comprises taxa that were once being considered for listing as endangered or threatened, but are not currently receiving such consideration. These taxa are included in one of the following three subcategories.

Subcategory 3A comprises taxa for which the Service has persuasive evidence of extinction. If rediscovered, however, such taxa might warrant high priority for addition to the List of Endangered and Threatened Wildlife.

Subcategory 3B comprises names that, on the basis of current taxonomic understanding, usually as represented in

published revisions and monographs, do not represent taxa meeting the Endangered Species Act's legal definition of species; it also includes vertebrate populations that do not meet this definition. Future investigation could lead to reevaluation of the listing qualifications of such entities.

Subcategory 3C comprises taxa that are now considered to be more abundant and/or widespread than previously thought. Should new information suggest that any such taxon is experiencing a numerical or distributional decline, or is under a substantial threat, it may be considered for transfer to category 1 or 2.

Many of the taxa in the accompanying table were also covered by the Service's previous reviews: For vertebrates the preceding review was published in the **Federal Register** of September 18, 1985 (50 FR 37958–37967), and for invertebrates the preceding review was published May 22, 1984 (49 FR 21664–21675). Certain of the taxa covered by the previous notices, however, have already had emergency, proposed, and/or final determinations of endangered or threatened status, and therefore these taxa are not included in this notice of review (for the complete U.S. Lists of Endangered and Threatened Wildlife and Plants contact any of the offices in the above **"ADDRESSES"** section).

The Service hereby solicits data concerning the taxa in the accompanying table. Especially sought is information:

(1) Indicating that a taxon would more properly be assigned to a category other than the one in which it appears;

(2) Nominating a taxon not included in the table;

(3) Recommending critical habitat for a taxon, or indicating why critical habitat may not be prudent or determinable for a taxon;

(4) Documenting threats to any included taxon;

(5) Pointing out taxonomic changes for any taxon;

(6) Suggesting new or more appropriate names; or

(7) Noting errors, such as in the indicated distributions.

The Service intends to consider all data received in response to this notice, to make appropriate amendments to the accompanying table, and to indicate intentions with regard to future listing actions. Substantive changes in status may be announced by periodic notices in the **Federal Register**.

Vertebrates are listed first in the accompanying table, followed by invertebrates. Each of these is arranged in a general systematic order, from fishes to mammals in the vertebrates and from sponges to mollusks in the invertebrates. Classes of vertebrates have separate headings, invertebrates headings reflect recognizable or convenient groups at the level of Order or above. For each taxon, the assigned category appears on the left, followed by the common (or vernacular) name, the scientific name, the family name, and the known historic range. Range is indicated by abbreviations of State names (also AS-American Samoa, CM-Commonwealth of the Northern Mariana Islands, GU-Guam, PR-Puerto Rico, TT-Trust Territory of the Pacific Islands, and VI-Virgin Islands) and by the full names of foreign regions and Navassa Island (a U.S. possession in the Caribbean). The species may no longer occur in some of the areas shown. The authority and date for the scientific name of mollusks is also given, because of unusual instability in systematics of the group. Some animals have been included that have not yet been formally described in the scientific literature. Such entities are indicated by the abbreviation "sp." after the generic name, or "ssp." after the generic and specific names. In the sections on birds, the abbreviation "N" indicates the nesting range of the species, and the abbreviation "V" indicates additional areas in which the species is a regular visitor. In the sections on insects, an asterisk on the category number or State signifies a lack of reports, to the Service's knowledge, since 1963 for the taxon or for the State, respectively.

A common or provisional vernacular name in English, Spanish, or Hawaiian is listed for most species. Some are vernacular names actually in common use; some have been standardized by professional committees of specialists. In some groups whose systematics most need revision the vernacular names are about as informative as the current scientific name. Many taxa are obscure, which almost guarantees that no name has much history of use. Group names such as snail, amphipod, or dragonfly have been appended to common names to clarify distinctions from other invertebrates or plants with similar or confusing names; such extra qualifiers would probably be dropped from any name that came into truly common usage. Some changes or simplifications will be noted from names used in previous versions of these tables. Continuity in the scientific name should make such changes evident. The earlier common name may also be given in parentheses.

Author

This notice was compiled by the endangered species staff in the Regional and Field Offices of the Service and in the Division of Endangered Species and Habitat Conservation in Washington, DC. Dr. George Drewry served as editor.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended:

Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
	VERTEBRATES		
	FISHES		
2 Kern Brook lamprey	*Lampetra hubbsi*	Petromyzontidae	CA.
3A Miller Lake lamprey	*Lampetra minima*	Petromyzontidae	OR.
2 Lake sturgeon	*Acipenser fulvescens*	Acipenseridae	AL,AR,GA,IA,IL,IN,KS,KY,LA,MI,MN,MO,MS, NE,NY,OH,PA,SD,TN,VT,WI,WV, Canada.
2 Gulf sturgeon	*Acipenser oxyrhynchus desotoi*	Acipenseridae	AL,FL,GA,LA,MS.
1 Pallid sturgeon	*Scaphirhynchus albus*	Acipenseridae	AR,IA,IL,KS,KY,LA,MO,MS,MT,ND,NE,SD,TN.
1 Alabama shovelnose sturgeon	*Scaphirhynchus platorynchus* ssp.	Acipenseridae	AL,MS.
3C Paddlefish	*Polyodon spathula*	Polyodontidae	AL,AR,IA,IL,IN,KS,KY,LA,MN,MO,MS,MT,ND, NE,OH,OK,PA,SD,TN,TX,WI.
3A Longjaw cisco	*Coregonus alpenae*	Salmonidae	IL,IN,MI,NY,OH,PA,WI, Canada.
3A Deepwater cisco	*Coregonus johannae*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2 Kiyi	*Coregonus kiyi*	Salmonidae	IL,IN,MI,MN,NY,WI, Canada.
3A Blackfin cisco	*Coregonus nigripinnis nigripinnis*	Salmonidae	IL,IN,MI,WI, Canada.
1 Shortnose cisco	*Coregonus reighardi*	Salmonidae	IL,IN,MI,NY,WI, Canada.
2 Shortjaw cisco	*Coregonus zenithicus*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2 Colorado cutthroat trout	*Salmo clarki pleuriticus*	Salmonidae	CO,UT,WY.
2 Bonneville cutthroat trout	*Salmo clarki utah*	Salmonidae	ID,UT,WY,NV.
3C Rio Grande cutthroat trout	*Salmo clarki virginalis*	Salmonidae	CO,NM.
3A Alvord cutthroat trout	*Salmo clarki* ssp	Salmonidae	NV,OR.
2 Snake River fine-spotted cutthroat trout	*Salmo clarki* ssp.	Salmonidae	ID.
2 Willow/Whitehorse cutthroat trout	*Salmo clarki* ssp.	Salmonidae	OR.
2 Kern River rainbow trout	*Salmo gairdneri gilberti*	Salmonidae	CA.
2 Redband trout	*Salmo* sp.	Salmonidae	CA,OR,ID,NV.
2 Bull trout	*Salvelinus confluentus*	Salmonidae	CA,ID,MT,NV,OR,WA.
2 Montana Arctic grayling	*Thymallus arcticus montanus*	Salmonidae	MT.
1 Delta smelt	*Hypomesus transpacificus*	Osmeridae	CA.
2 Pygmy smelt	*Osmerus spectrum*	Osmeridae	ME
2 Olympic mudminnow	*Novumbra hubbsi*	Umbridae	WA?
2 Mexican stoneroller	*Campostoma ornatum*	Cyprinidae	AZ,TX, Mexico.
2 Devil's River minnow	*Dionda diaboli*	Cyprinidae	TX.
2 Alvord chub	*Gila alvordensis*	Cyprinidae	NV,OR.
2 Sheldon tui chub	*Gila bicolor eurysoma*	Cyprinidae	NV,OR.
3A Independence Valley tui chub	*Gila bicolor isolata*	Cyprinidae	NV.
2 Newark Valley tui chub	*Gila bicolor newarkensis*	Cyprinidae	NV.
2 Lahontan tui chub	*Gila bicolor obesa*	Cyprinidae	NV.
2 Oregon Lakes tui chub	*Gila bicolor oregonensis*	Cyprinidae	OR.
1 Cowhead Lake tui chub	*Gila bicolor vaccaceps*	Cyprinidae	CA.
2 Big Smoky Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Catlow tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2 Dixie Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Fish Creek Springs tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Fish Lake Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Hot Creek Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Pleasant Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Railroad Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
1 Summer Basin tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2 Leatherside chub	*Gila copei*	Cyprinidae	ID,UT,WY.
3A Thicktail chub	*Gila crassicauda*	Cyprinidae	CA.
2 Gila chub	*Gila intermedia*	Cyprinidae	AZ,NM.
2 Gila roundtail chub	*Gila robusta grahami*	Cyprinidae	AZ,NM.
2 Moapa roundtail chub	*Gila robusta* ssp.	Cyprinidae	NV.
2 Oregon chub	*Oregonichthys (=Hybopsis) crameri*	Cyprinidae	OR.
2 Sturgeon chub	*Hybopsis gelida*	Cyprinidae	AR,IA,IL,KY,KS,LA,MO,MS,MT,NB,ND,SD,WY, TN.
2 Sicklefin chub	*Hybopsis meeki*	Cyprinidae	AR,IA,IL,KS,KY,LA,MO,MS,NB,ND,SD,TN.
1 Least chub	*Iotichthys phlegethontis*	Cyprinidae	UT.
2 Virgin spinedace	*Lepidomeda mollispinis mollispinis*	Cyprinidae	AZ,NV,UT.
2 Smalleye shiner	*Notropis buccula*	Cyprinidae	TX.
2 Blue shiner	*Notropis caeruleus*	Cyprinidae	AL,GA,TN.
2 Bluestripe shiner	*Notropis callitaenia*	Cyprinidae	AL,FL,GA.
2 Chihuahua shiner	*Notropis chihuahua*	Cyprinidae	TX.
2 Arkansas River shiner	*Notropis girardi*	Cyprinidae	AR,KS,NM,OK,TX.
2 Rio Grande shiner	*Notropis jemezanus*	Cyprinidae	NM.
1A Phantom shiner	*Notropis orca*	Cyprinidae	TX, Mexico.
2 Sharpnose shiner	*Notropis oxyrhyncus*	Cyprinidae	TX.
3C Peppered shiner	*Notropis perpallidus*	Cyprinidae	AR,OK.
2 Proserpine shiner	*Notropis proserpinus*	Cyprinidae	TX.
3A Rio Grande bluntnose shiner	*Notropis simus simus*	Cyprinidae	NM.
2 Ouachita Mountain shiner	*Notropis snelsoni*	Cyprinidae	AR,OK.
2 Altamaha shiner	*Notropis xaenurus*	Cyprinidae	GA.
2 Swamp shiner	*Notropis* sp.	Cyprinidae	FL.
1 Cahaba shiner	*Notropis* sp.	Cyprinidae	AL.
2 Palezone shiner	*Notropis* sp.	Cyprinidae	AL,KY,TN.
2 Kanawha minnow	*Phenacobius teretulus*	Cyprinidae	NC,VA,WV.
2 Sacramento splittail	*Pogonichthys macrolepidotus*	Cyprinidae	CA.
2 Relict dace	*Relictus solitarius*	Cyprinidae	NV.
2 Cheat minnow	*Rhinichthys bowersi*	Cyprinidae	PA,WV.
2 Moapa speckled dace	*Rhinichthys osculus moapae*	Cyprinidae	NV.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories)

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Pahranagat speckled dace	*Rhinichthys osculus velifer*	Cyprinidae	NV.
2	Amargosa Canyon speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	CA.
2	Diamond Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Meadow Valley Wash speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	White River speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV
2	Monitor Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Oasis Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV
2	Sandhills chub	*Semotilus lumbee*	Cyprinidae	NC,SC.
2	White River desert sucker	*Catostomus clarki intermedius*	Catostomidae	NV.
2	Meadow Valley Wash desert sucker	*Catostomus clarki* ssp.	Catostomidae	NV
2	Zuni Mountain sucker	*Catostomus discobolus yarrowi*	Catostomidae	AZ,NM.
3B	Webug sucker	*Catostomus fecundus*	Catostomidae	UT.
2	Goose Lake sucker	*Catostomus occidentalis lacusanserinus*	Catostomidae	CA,OR.
2	Jenny Creek sucker	*Catostomus rimiculus* ssp.	Catostomidae	CA,OR.
2	Klamath largescale sucker	*Catostomus snyderi*	Catostomidae	CA,OR.
2	Wall Canyon sucker	*Catostomus* sp.	Catostomidae	NV.
2	Blue sucker	*Cycleptus elongatus*	Catostomidae	AL,AR,IA,IL,IN,KS,KY,LA,MN,MO,MS,MT,ND, NE,NM,OH,OK,PA,SD,TN,TX,WI,WV, Mexico.
3C	Rustyside sucker	*Moxostoma hamiltoni*	Catostomidae	VA.
2	Bighead (=Savannah) redhorse	*Moxostoma* sp.	Catostomidae	GA,SC.
1	Razorback sucker	*Xyrauchen texanus*	Catostomidae	AZ,CA,CO,NV,UT,WY.
3C	Headwater catfish	*Ictalurus lupus*	Ictaluridae	NM,TX.
3C	Carolina madtom	*Noturus furiosus*	Ictaluridae	NC.
2	Orangefin madtom	*Noturus gilberti*	Ictaluridae	NC,VA.
2	Ouachita madtom	*Noturus lachneri*	Ictaluridae	AR.
2	Frecklebelly madtom	*Noturus munitus*	Ictaluridae	AL,GA,LA,MS,TN.
1	Neosho madtom	*Noturus placidus*	Ictaluridae	KS,MO,OK.
2	Pygmy madtom	*Noturus stanauli*	Ictaluridae	TN.
2	Caddo madtom	*Noturus taylori*	Ictaluridae	AR.
2	Widemouth blindcat	*Satan eurystomus*	Ictaluridae	TX.
2	Toothless blindcat	*Trogloglanis pattersoni*	Ictaluridae	TX.
2	Northern cavefish	*Amblyopsis spelaea*	Amblyopsidae	IN,KY.
2	Preston White River springfish	*Crenichthys baileyi albivallis*	Cyprinodontidae	NV.
2	Moapa White River springfish	*Crenichthys baileyi moapa*	Cyprinodontidae	NV.
2	Conchos pupfish	*Cyprinodon eximius*	Cyprinodontidae	TX, Mexico.
3A	Tecopa pupfish	*Cyprinodon nevadensis calidae*	Cyprinodontidae	CA.
1	Shoshone pupfish	*Cyprinodon nevadensis shoshone*	Cyprinodontidae	CA.
1	Pecos pupfish	*Cyprinodon pecosensis*	Cyprinodontidae	NM,TX.
2	White Sands pupfish	*Cyprinodon tularosa*	Cyprinodontidae	NM.
3A	Monkey Springs pupfish	*Cyprinodon* sp.	Cyprinodontidae	AZ.
2	Palomas pupfish	*Cyprinodon* sp.	Cyprinodontidae	NM, Mexico.
3A	Whiteline topminnow	*Fundulus albolineatus*	Cyprinodontidae	AL.
3C	Barrens topminnow	*Fundulus julisia*	Cyprinodontidae	TN.
2	Waccamaw killifish	*Fundulus waccamensis*	Cyprinodontidae	NC.
2	Blotched gambusia	*Gambusia senilis*	Poeciliidae	TX, Mexico.
2	Sacramento perch (native population)	*Archoplites interruptus*	Centrarchidae	CA.
2	Carolina (=barred) pygmy sunfish	*Elassoma boehlkei*	Centrarchidae	NC,SC.
2	Blue-barred pygmy sunfish	*Elassoma okatie*	Centrarchidae	SC
1	Spring pygmy sunfish	*Elassoma* sp.	Centrarchidae	AL.
2	Guadalupe bass	*Micropterus treculi*	Centrarchidae	TX.
2	Crystal darter	*Ammocrypta asprella*	Percidae	AL,AR,FL,IA,IL,IN,KY,LA,MN,MO,MS,OH,OK, TN,WI,WV.
2	Eastern sand darter	*Ammocrypta pellucida*	Percidae	IL,IN,KY,MI,NY,OH,PA,VT,WV.
3C	Sharphead darter	*Etheostoma acuticeps*	Percidae	NC,TN,VA.
2	Coppercheek darter	*Etheostoma aquali*	Percidae	TN.
2	Arkansas darter	*Etheostoma cragini*	Percidae	AR,CO,KS,MO,OK.
2	Coldwater darter	*Etheostoma ditrema*	Percidae	AL,GA,TN.
2	Rio Grande darter	*Etheostoma grahami*	Percidae	TX, Mexico.
3C	Greenthroat darter	*Etheostoma lepidum*	Percidae	NM,TX.
2	Pinewoods darter	*Etheostoma mariae*	Percidae	NC,SC.
2	Yellowcheek darter	*Etheostoma moorei*	Percidae	AR.
2	Cumberland Johnny darter	*Etheostoma nigrum susanae*	Percidae	KY.
2	Finescale saddled darter	*Etheostoma osburni*	Percidae	VA,WV.
3C	Paleback darter	*Etheostoma pallididorsum*	Percidae	AR.
3B	Waccamaw darter	*Etheostoma perlongum*	Percidae	NC.
2	Striated darter	*Etheostoma striatulum*	Percidae	TN.
2	Tuscumbia darter	*Etheostoma tuscumbia*	Percidae	AL,TN.
2	Jewel darter	*Etheostoma (Doration)* sp.	Percidae	TN.
2	Cherokee darter	*Etheostoma (Ulocentra)* sp.	Percidae	GA.
3C	Yazoo darter	*Etheostoma (Ulocentra)* sp.	Percidae	MS.
2	Goldline darter	*Percina aurolineata*	Percidae	AL,GA.
2	Bluestripe darter	*Percina cymatotaenia*	Percidae	MO.
2	Freckled darter	*Percina lenticula*	Percidae	AL,GA,LA,MS.
2	Longhead darter	*Percina macrocephala*	Percidae	KY,NC,NY,OH,PA,TN,VA,WV.
2	Longnose darter	*Percina nasuta*	Percidae	AR,MO,OK.
2	Olive darter	*Percina squamata*	Percidae	GA,KY,TN.
2	Stargazing darter	*Percina uranidea*	Percidae	AR,IL,IN,LA,MO.
3A	Blue pike	*Stizostedion vitreum glaucum*	Percidae	MI,NY,OH,PA, Canada.
2	Tidewater goby	*Eucyclogobius newberryi*	Gobiidae	CA.
1	O'opu alamo'o	*Lentipes concolor*	Gobiidae	HI.
2	Rough sculpin	*Cottus asperrimus*	Cottidae	CA.
2	Malheur mottled sculpin	*Cottus bairdi* ssp.	Cottidae	OR.
3C	Shoshone sculpin	*Cottus greenei*	Cottidae	ID.
2	Wood River sculpin	*Cottus leiopomus*	Cottidae	ID.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
1	Pygmy sculpin	*Cottus pygmaeus*	Cottidae	AL.
2	Slender sculpin	*Cottus tenuis*	Cottidae	OR.
2	Bluestone sculpin	*Cottus* sp.	Cottidae	VA,WV.
	AMPHIBIANS			
2	Flatwoods salamander	*Ambystoma cingulatum*	Ambystomatidae	AL,FL,GA,MS,SC.
2	California tiger salamander	*Ambystoma tigrinum californiense*	Ambystomatidae	CA.
2	Sonoran tiger salamander	*Ambystoma tigrinum stebbinsi*	Ambystomatidae	AZ, Mexico.
2	Hellbender	*Cryptobranchus alleganiensis*	Cryptobranchidae	AL,AR,GA,IA,IL,IN,KY,KS,MD,MN,MO,MS NC, NY,OH,PA,SC,TN,VA,WV.
3C	Green salamander (Appalachian population)	*Aneides aeneus*	Plethodontidae	AL,KY,MD,MS,OH,PA,TN,VA,WV.
2	Green salamander (Southern Blue Ridge population)	*Aneides aeneus*	Plethodontidae	GA,NC,SC.
2	Sacramento Mountains salamander	*Aneides hardii*	Plethodontidae	NM.
1	Inyo Mountains slender salamander	*Batrachoseps campi*	Plethodontidae	CA.
2	Channel Islands slender salamander	*Batrachoseps pacificus pacificus*	Plethodontidae	CA.
2	Kern Canyon slender salamander	*Batrachoseps simatus*	Plethodontidae	CA.
2	Tehachapi slender salamander	*Batrachoseps stebbinsi*	Plethodontidae	CA.
2	Yellow-blotched ensatina	*Ensatina eschscholtzi croceator*	Plethodontidae	CA.
2	Large-blotched ensatina	*Ensatina eschscholtzi klauberi*	Plethodontidae	CA.
2	Barton Springs salamander	*Eurycea* sp.	Plethodontidae	TX.
2	Dark-sided salamander	*Eurycea aquatica*	Plethodontidae	AL, TN.
2	Junaluska salamander	*Eurycea junaluska*	Plethodontidae	NC.
3B	Cascade Caverns salamander	*Eurycea latitans*	Plethodontidae	TX.
2	Texas salamander	*Eurycea neotenes*	Plethodontidae	TX.
2	Comal blind salamander	*Eurycea tridentifera*	Plethodontidae	TX.
3B	Valdina Farms salamander	*Eurycea troglodytes*	Plethodontidae	TX.
2	Oklahoma salamander	*Eurycea tynerensis*	Plethodontidae	AR,OK,MO.
2	Tennessee cave salamander	*Gyrinophilus palleucus*	Plethodontidae	AL,GA,TN.
1	Berry cave salamander	*Gyrinophilis palleucus gulolineatus*	Plethodontidae	TN
2	West Virginia spring salamander	*Gyrinophilus subterraneus*	Plethodontidae	WV.
2	Georgia blind salamander	*Haideotriton wallacei*	Plethodontidae	GA,FL.
2	Limestone salamander	*Hydromantes brunus*	Plethodontidae	CA.
2	Mount Lyell salamander	*Hydromantes platycephalus*	Plethodontidae	CA.
2	Shasta salamander	*Hydromantes shastae*	Plethodontidae	CA.
2	Caddo Mountain salamander	*Plethodon caddoensis*	Plethodontidae	AR.
2	Del Norte salamander	*Plethodon elongatus*	Plethodontidae	CA,OR.
2	Fourche Mountain salamander	*Plethodon fourchensis*	Plethodontidae	AR.
2	Peaks of Otter salamander	*Plethodon hubrichti*	Plethodontidae	VA.
3C	Coeur d'Alene salamander	*Plethodon idahoensis*	Plethodontidae	ID,MT.
2	Larch Mountain salamander	*Plethodon larselli*	Plethodontidae	OR,WA.
1	Jemez Mountain salamander	*Plethodon neomexicanus*	Plethodontidae	NM.
3C	Rich Mountain (=Ouachita) salamander	*Plethodon ouachitae*	Plethodontidae	AR,OK.
2	Cow Knob (=White-spotted) salamander	*Plethodon punctatus*	Plethodontidae	VA,WV.
2	Siskiyou Mountains salamander	*Plethodon stormi (=P. elongatus s.)*	Plethodontidae	CA,OR.
2	Robust (=Blanco) blind salamander	*Typhlomolge robusta*	Plethodontidae	TX.
3C	Neuse River (=Carolina) waterdog	*Necturus lewisi*	Proteidae	NC.
2	Sipsey Fork mudpuppy (=waterdog)	*Necturus maculosus* ssp.	Proteidae	AL.
2	Black-spotted newt	*Notophthalmus meridionalis*	Salamandridae	TX, Mexico.
2	Gulf Hammock dwarf siren	*Pseudobranchus striatus lustricolus*	Sirenidae	FL.
2	Rio Grande lesser siren	*Siren intermedia texana*	Sirenidae	TX, Mexico.
2	Boreal western toad (Rocky Mountains population)	*Bufo boreas boreas*	Bufonidae	CO,NM,WY.
2	Black toad	*Bufo exsul*	Bufonidae	CA.
2	Arroyo southwestern toad	*Bufo microscaphus californicus*	Bufonidae	CA, Mexico.
2	Arizona southwestern toad	*Bufo microscaphus microscaphus*	Bufonidae	AZ,CA,NM,NV,UT, Mexico.
2	Amargosa toad	*Bufo nelsoni*	Bufonidae	NV.
3C	Sonoran green toad	*Bufo retiformus*	Bufonidae	AZ, Mexico.
3C	Pine Barrens treefrog	*Hyla andersonii*	Hylidae	AL,FL,NC,NJ,SC.
2	Illinois Strecker's chorus frog	*Pseudacris streckeri illinoensis*	Hylidae	AR,IL,MO.
2	Guajon, rock frog	*Eleutherodactylus cooki*	Leptodactylidae	PR.
2	mottled coqui (Eneida's coqui)	*Eleutherodactylus eneidae*	Leptodactylidae	PR.
2	Web-footed coqui	*Eleutherodactylus karlschmidti*	Leptodactylidae	PR.
3B	Ramos bromeliad frog	*Eleutherodactylus ramosi*	Leptodactylidae	PR.
3B	Duckwater frog	*Rana* sp.	Ranidae	NV.
3A	San Felipe leopard frog	*Rana* sp.	Ranidae	CA.
2	Florida crawfish (=gopher) frog	*Rana areolata aesopus*	Ranidae	FL,GA.
2	Carolina crawfish (=gopher) frog	*Rana areolata capito*	Ranidae	GA,NC,SC.
2	Dusky crawfish (=gopher) frog	*Rana areolata sevosa*	Ranidae	AL,FL,LA,MS.
2	California red-legged frog	*Rana aurora draytoni*	Ranidae	CA, Mexico.
3B	Vegas Valley leopard frog	*Rana (pipiens) fisheri*	Ranidae	NV.
2	Florida bog frog	*Rana okaloosae*	Ranidae	FL.
3A	Relict leopard frog	*Rana onca*	Ranidae	AZ,NV,UT
1	Tarahumara frog	*Rana tarahumarae*	Ranidae	AZ, Mexico.
2	Yavapai (=lowland) leopard frog	*Rana yavapaiensis*	Ranidae	AZ,CA,NM, Mexico
	REPTILES			
2	Alligator snapping turtle	*Macroclemys temminckii*	Chelydridae	AR,AL,FL,GA,IL,IN,KY,KS,LA,MO,MS,OK,TN, TX.
3C	Northwestern pond turtle (California population)	*Clemmys marmorata marmorata*	Emydidae	CA.
2	Northwestern pond turtle	*Clemmys marmorata marmorata*	Emydidae	OR,WA, Canada.
2	Southwestern pond turtle	*Clemmys marmorata pallida*	Emydidae	CA.
2	Bog turtle	*Clemmys muhlenbergii*	Emydidae	CT,DE,GA,MA,MD,NC,NY,NJ,PA,RI,SC,VA.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Barbour's map turtle	*Graptemys barbouri*	Emydidae	AL,FL,GA
3C	Cagle's map turtle	*Graptemys caglei*	Emydidae	TX.
2	Yellow-blotched map turtle (=sawback)	*Graptemys flavimaculata*	Emydidae	MS.
3C	Black-knobbed map turtle (=sawback)	*Graptemys nigrinoda*	Emydidae	AL,MS.
3C	Sabine Ouachita map turtle	*Graptemys ouachitensis sabinensis*	Emydidae	LA,TX.
3C	Texas map turtle	*Graptemys versa*	Emydidae	TX.
2	Northern diamondback terrapin	*Malaclemys terrapin terrapin*	Emydidae	CT,DE,MD,NC,NJ,NY,MA,RI,VA.
3C	Suwanee cooter	*Pseudemys concinna suwaniensis*	Emydidae	FL,GA.
2	Jicotea	*Pseudemys (decussata) stejnegeri*	Emydidae	PR.
3C	Big Bend slider	*Pseudemys scripta gaigeae*	Emydidae	TX, Mexico.
3B	Key striped mud turtle	*Kinosternon bauri bauri*	Kinosternidae	FL.
3C	Arizona yellow mud turtle	*Kinosternon flavescens arizonense*	Kinosternidae	AZ, Mexico.
2	Yellow mud turtle (northern populations)	*Kinosternon flavescens flavescens*	Kinosternidae	IA,IL,MO,NE.
3B	Illinois mud turtle	*Kinosternon flavescens spooneri*	Kinosternidae	IA,IL,MO.
2	Big Bend mud turtle	*Kinosternon hirtipes murrayi*	Kinosternidae	TX, Mexico.
2	Desert tortoise (Mojave Desert population)	*Gopherus (=Xerobates) agassizii*	Testudinidae	CA,NV, Mexico.
2	Desert tortoise (Sonora Desert population)	*Gopherus (=Xerobates) agassizii*	Testudinidae	AZ, Mexico.
2	Gopher tortoise (eastern population)	*Gopherus polyphemus*	Testudinidae	FL,GA,SC.
3C	Baker's worm (=legless) lizard	*Amphisbaena bakeri*	Amphisbaenidae	PR.
2	Island glass lizard	*Ophisaurus compressus*	Anguidae	FL,GA,SC.
2	Panamint alligator lizard	*Elgaria panamintinus*	Anguidae	CA.
2	Black California legless lizard	*Anniella pulchra nigra*	Anniellidae	CA.
2	Barefoot gecko	*Coleonyx (=Anarbylus) switaki*	Gekkonidae	CA, Mexico.
3C	Reticulated (=Big Bend) gecko	*Coleonyx reticulatus*	Gekkonidae	TX, Mexico.
3C	Gila monster	*Heloderma suspectum*	Helodermatidae	AZ,CA,NM,NV,UT, Mexico.
2	Cook's anole	*Anolis cooki*	Iguanidae	PR
2	Puerto Rican pygmy anole	*Anolis occultis*	Iguanidae	PR.
2	Reticulate collared lizard	*Crotaphytus reticulatus*	Iguanidae	TX, Mexico.
3A	Navassa Island iguana	*Cyclura cornuta nigerrima*	Iguanidae	Navassa Island
3A	Navassa curley-tailed lizard	*Leiocephalus eremitus*	Iguanidae	Navassa Island
2	Texas horned lizard	*Phrynosoma cornutum*	Iguanidae	AZ,AR,CO,KS,LA,MO,NM,OK,TX, Mexico.
2	San Diego horned lizard	*Phrynosoma coronatum blainvillei*	Iguanidae	CA, Mexico.
1	Flat-tailed horned lizard	*Phrynosoma mcalli*	Iguanidae	CA,AZ, Mexico.
3C	Sand dune sagebrush lizard	*Sceloporus graciosus arenicolous*	Iguanidae	TX,NM.
2	Florida scrub lizard	*Sceloporus woodi*	Iguanidae	FL.
2	Colorado Desert fringed-toed lizard	*Uma notata notata*	Iguanidae	CA, Mexico.
2	Cowles fringe-toed lizard	*Uma notata rufopunctata*	Iguanidae	AZ, Mexico.
3C	Pandanus skink	*Aulacoplax leptosoma*	Scincidae	TT.
2	Florida Keys mole skink	*Eumeces egregius egregius*	Scincidae	FL.
2	Cedar Key mole skink	*Eumeces egregius insularis*	Scincidae	FL.
2	Arizona Gilbert's skink	*Eumeces gilberti arizonensis*	Scincidae	AZ.
2	Blue-tailed ground lizard	*Ameiva wetmorei*	Têiidae	PR.
2	Gray-checkered whiptail	*Cnemidophorus dixoni*	Teiidae	NM,TX.
2	Orange-throated whiptail	*Cnemidophorus hyperythrus*	Teiidae	CA, Mexico.
2	Southern rubber boa	*Charina bottae umbratica*	Boidae	CA.
3A	St. Croix racer (=ground snake)	*Alsophis sanctricucis*	Colubridae	VI.
2	Culebra garden snake	*Arrhyton exiguum exiguum*	Colubridae	PR.
2	Kirtland's snake	*Clonophis kirtlandi*	Colubridae	IL,IN,KY,MI,OH,PA.
2	Key ring-necked snake	*Diadophis punctatus acricus*	Colubridae	FL.
3C	Desert king snake	*Lampropeltis getulus splendida*	Colubridae	AZ,NM,OK,TX.
3C	Gray-banded king snake	*Lampropeltis mexicana alterna*	Colubridae	TX.
2	San Diego Mountain king snake	*Lampropeltis zonata pulchra*	Colubridae	CA.
2	Alameda striped racer	*Masticophis lateralis euryxanthus*	Colubridae	CA.
2	Copperbelly water snake	*Nerodia erythrogaster neglecta*	Colubridae	IL,IN,KY,MI,OH.
2	Brazos water snake	*Nerodia harteri harteri*	Colubridae	TX.
2	Lake Erie water snake	*Nerodia sipedon insularum*	Colubridae	OH, Canada.
2	Black pine snake	*Pituophis melanoleucus lodingi*	Colubridae	AL,LA,MS.
2	Northern pine snake	*Pituophis melanoleucus melanoleucus*	Colubridae	AL,GA,NC,NJ,SC,TN,VA,WV.
2	Florida pine snake	*Pituophis melanoleucus mugitus*	Colubridae	AL,FL,GA,SC.
2	Santa Cruz Island gopher snake	*Pituophis melanoleucus pumilis*	Colubridae	CA.
2	Louisiana pine snake	*Pituophis melanoleucus ruthveni*	Colubridae	LA,TX.
2	Short-tailed snake	*Stilosoma extenuatum*	Colubridae	FL.
2	Rimrock crowned snake	*Tantilla oolitica*	Colubridae	FL.
2	Short-headed garter snake	*Thamnophis brachystoma*	Colubridae	NY,PA.
2	Giant Sierra garter snake	*Thamnophis couchi gigas*	Colubridae	CA.
2	Mexican garter snake	*Thamnophis eques*	Colubridae	AZ,NM, Mexico.
2	Narrow-headed garter snake	*Thamnophis rufipunctatus*	Colubridae	AZ,NM, Mexico
2	Texas garter snake	*Thamnophis sirtalis annectans*	Colubridae	KS,TX.
2	Navassa dusky dwarf boa	*Tropidophis melanurus bucculentus*	Colubridae	Navassa Island.
3C	Arizona ridge-nosed rattlesnake	*Crotalus willardi willardi*	Viperidae	AZ, Mexico.
2	Eastern massasauga	*Sistrurus catenatus catenatus*	Viperidae	IA,IL,IN,MI,MO,MN,NY,OH,PA,WI, Canada.
	BIRDS			
2	Reddish egret	*Egretta rufescens*	Ardeidae	N=FL,TX, Mexico, West Indies; V=AL,CA,LA,MS.
2	White-faced ibis	*Plegadis chihi*	Threskiornithidae	N=AZ,CA,CO,NM,NV,OK,OR,TX,UT; V=ID,WY Mexico.
3C	Tule white-fronted goose	*Anser albifrons elgasi*	Anatidae	N=AK; V=CA,OR.
2	West Indian whistling duck	*Dendrocygna arborea*	Anatidae	PR,VI, West Indies.
2	Fulvous whistling duck (SW U.S. population)	*Dendrocygna bicolor*	Anatidae	N=AZ,CA; V=Mexico.
2	Lesser white-cheeked pintail	*Anas bahamensis bahamensis*	Anatidae	PR,VI, West Indies, South America.
2	West Indian ruddy duck	*Oxyura jamaicensis jamaicensis*	Anatidae	PR,VI, West Indies

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CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3C American swallow-tailed kite	*Elanoides forficatus forficatus*	Accipitridae	N=AL,AR,FL,GA,IA,IL,KS,LA,MN,MO,MS,NC,NE,OK,SC,TN,TX,WI; V=Central America.
2 Apache northern goshawk	*Accipiter gentilis apache*	Accipitridae	N=AZ,NM, Mexico.
3C Puerto Rican sharp-shinned hawk	*Accipiter striatus venator*	Accipitridae	PR.
2 Northern gray hawk	*Buteo nitidus maximus*	Accipitridae	N=AZ,NM,TX, Mexico.
2 Puerto Rican broad-winged hawk	*Buteo platypterus brunnescens*	Accipitridae	PR.
2 Ferruginous hawk	*Buteo regalis*	Accipitridae	N=CO,ID,KS,MT,ND,NE,NM,NV,OR,OR,SD,TX,UT,WA,WY, Canada; V=AZ,CA, Mexico.
3C Swainson's hawk	*Buteo swainsoni*	Accipitridae	N=AK,AZ,CA,CO,IA,ID,KS,MN,MO,MT,ND,NE,NM,NV,OK,OR,SD,TX,UT,WA,WY, Canada; V=FL, Mexico, Central and South America.
2 Southeastern American kestrel	*Falco sparverius paulus*	Falconidae	AL,FL,GA,LA,MS.
2 Western sage grouse	*Centrocercus urophasianus phaios*	Phasianidae	OR,WA,Canada.
2 Columbian sharptailed grouse	*Tympanuchus phasianellus columbianus*	Phasianidae	CA,CO,ID,OR,MT,NV,UT,WA,WY, Canada.
2 Mangrove clapper rail	*Rallus longirostris insularum*	Rallidae	FL.
1 California black rail	*Laterallus jamaicensis coturniculus*	Rallidae	AZ,CA,Mexico.
2 Caribbean coot	*Fulica caribaea*	Rallidae	PR,VI, West Indies.
2 Western snowy plover	*Charadrius alexandrinus nivosus*	Charadriidae	N=CA,CO,KS,NM,NV,OK,OR,TX,UT,WA; V=AZ, Mexico.
2 Southeastern snowy plover	*Charadrius alexandrinus tenuirostris*	Charadriidae	AL,FL,LA,MS,PR, Greater Antilles.
2 Mountain plover	*Charadrius montanus*	Charadriidae	N=CO,KS,MT,ND,NE,NM,OK,SD,TX,WY; V=AZ,CA,NV,UT, Mexico.
2 Elegant tern	*Sterna elegans*	Laridae	CA, Mexico.
2 Long-billed curlew	*Numenius americanus*	Scolopacidae	N=CA,CO,IA,ID,KS,MT,ND,NE,NM,NV,OK,OR,SD,TX,UT,WA,WI,WY, Canada; V=AZ,LA,MN, Mexico.
2 Bristle-thighed curlew	*Numenius tahitiensis*	Scolopacidae	N=AK; V=HI, Central Pacific Islands
2 Marbled murrelet	*Brachyramphus marmoratus*	Alcidae	AK,CA,OR,WA, Canada, North Pacific rim to Japan.
2 White-crowned pigeon	*Columba leucocephala*	Columbidae	FL, West Indies, Central America.
2 Radak Micronesian pigeon	*Ducula oceanica ratakensis*	Columbidae	TT (Marshall Islands).
2 Truk Micronesian pigeon	*Ducula oceanica teraoki*	Columbidae	TT (Caroline Islands).
3A Mariana fruit dove	*Ptilinopus roseicapillus*	Columbidae	GU,CM.
3C Palau ground dove	*Gallicolumba canifrons*	Columbidae	Palau IS., West Pacific Ocean.
3A Guam white-throated ground-dove	*Gallicolumba xanthonura xanthonura*	Columbidae	GU,CM.
3C Palau Nicobar pigeon	*Caloenas nicobarensis pelewensis*	Columbidae	TT (Caroline Islands).
3B Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Cuculidae	N=AZ,CA,CO,ID,NM,NV,OR,TX,UT,WA, Canada, Mexico; V=Central and South America.
2 Virgin Islands screech owl	*Otus nudipes newtoni*	Strigidae	PR,VI.
3C Palau owl	*Pyroglaux (=Otus) podargina*	Strigidae	Palau IS., West Pacific Ocean.
2 Cactus ferruginous pygmy-owl	*Glaucidium brasilianum cactorum*	Strigidae	AZ,TX, Mexico
2 Spotted owl	*Strix occidentalis*	Strigidae	AZ,CA,CO,NM,OR,TX,UT,WA, Mexico.
1 Ponape short-eared owl	*Asio flammeus ponapensis*	Strigidae	TT (Caroline Islands).
2 Southwestern willow flycatcher	*Empidonax traillii extimus*	Tyrannidae	AZ,CO,NM, Mexico.
1 Appalachian Bewick's wren	*Thryomanes bewickii altus*	Troglodytidae	AL,GA,KY,MD,NC,OH,PA,SC,TN,VA,WV, Canada.
3A San Clemente Bewick's wren	*Thryomanes bewickii leucophrys*	Troglodytidae	CA.
2 Coastal black-tailed gnatcatcher	*Polioptila melanura californica*	Muscicapidae	CA, Mexico.
3C Palau fantail flycatcher	*Rhipidura lepida*	Muscicapidae	Palau IS., West Pacific Ocean.
3C Truk monarch	*Metabolus rugensis*	Muscicapidae	TT (Caroline Islands).
3A Guam rufous-fronted fantail	*Rhipidura rufifrons uraniae*	Muscicapidae	GU.
1 Palau white-breasted wood-swallow	*Artamus leucorhynchus pelewensis*	Artamidae	TT (Caroline Islands).
2 Migrant loggerhead shrike	*Lanius ludovicianus migrans*	Laniidae	N=AR,CT,DE,DC,IA,IL,IN,KS,KY,MA,MD,ME,MI,MN,MO,NC,NE,NH,NJ,NY,OH,OK,PA,RI,TN,TX,VA,VT,WI,WV, Canada; V=AL,FL,GA,LA,MS,SC.
3A Cardinal honey-eater	*Myzomela cardinalis saffordi*	Melephagidae	GU,CM.
2 Bishop's o'o	*Moho bishopi*	Melephagidae	HI.
2 Rota bridled white-eye	*Zosterops conspicillata rotensis*	Zosteropidae	CM.
1 Truk greater white-eye	*Rukia ruki*	Zosteropidae	TT (Caroline Islands).
3C Arizona Bell's vireo	*Vireo bellii arizonae*	Vireonidae	N=AZ,CA,NV,UT; V=Mexico.
3C Colima warbler	*Vermivora crissalis*	Emberizidae	N=TX, V=Mexico.
2 Tropical parula (=Olive-backed warbler)	*Parula pitiayumi nigrilora*	Emberizidae	TX, Mexico.
2 Golden-cheeked warbler	*Dendroica chrysoparia*	Emberizidae	N=TX; V=Mexico, Central America.
2 Stoddard's yellow-throated warbler	*Dendroica dominica stoddardi*	Emberizidae	AL,FL.
2 Elfin woods warbler	*Dendroica angelae*	Emberizidae	PR.
2 Brownsville common yellowthroat	*Geothlypis trichas insperata*	Emberizidae	TX, Mexico.
2 Saltmarsh common yellowthroat	*Geothlypis trichas sinuosa*	Emberizidae	CA.
2 Texas (=Sennett's) olive sparrow	*Arremonops rufivirgatus rufivirgatus*	Emberizidae	TX, Mexico.
3C Yuma brown towhee	*Pipilo fuscus relictus*	Emberizidae	AZ.
2 Bachman's sparrow	*Aimophila aestivalis*	Emberizidae	AL,AR,FL,GA,IL,IN,KY,LA,MD,MO,MS,NC,OH,OK,PA,SC,TN,TX,VA,WV.
2 Texas Botteri's sparrow	*Aimophila botterii texana*	Emberizidae	TX, Mexico.
3C Yuma rufous-crowned sparrow	*Aimophila ruficeps rupicola*	Emberizidae	AZ.
2 Belding's savannah sparrow	*Passerculus sandwichensis beldingi*	Emberizidae	CA, Mexico.
2 Large-billed savannah sparrow	*Passerculus sandwichensis rostratus*	Emberizidae	N=Mexico; V=AZ,CA.
3A Texas Henslow's sparrow	*Ammodramus henslowii houstonensis*	Emberizidae	TX.
2 Wakulla seaside sparrow	*Ammodramus maritima juncicola*	Emberizidae	FL.
2 Smyrna seaside sparrow	*Ammodramus maritima peloneta*	Emberizidae	FL.
2 Amak song sparrow	*Melospiza melodia amaka*	Emberizidae	AK.

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CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3A	Santa Barbara song sparrow	*Melospiza melodia graminea*	Emberizidae	CA.
2	Suisun song sparrow	*Melospiza melodia maxillaris*	Emberizidae	CA.
2	San Pablo song sparrow	*Melospiza melodia samuelis*	Emberizidae	CA.
2	Alameda (South Bay) song sparrow	*Melospiza melodia pusillula*	Emberizidae	CA
2	Tricolored blackbird	*Agelaius tricolor*	Emberizidae	CA,OR, Mexico.
2	Mexican hooded oriole	*Icterus cucullatus cucullatus*	Emberizidae	TX, Mexico.
2	Sennett's hooded oriole	*Icterus cucullatus sennettii*	Emberizidae	TX, Mexico.
2	Audubon's oriole	*Icterus graduacauda audubonii*	Emberizidae	TX, Mexico.
3C	Palau blue-faced parrotfinch	*Erythrura trichroa pelewensis*	Estrildidae	TT (Caroline Islands).
	MAMMALS			
2	Tuckahoe masked shrew	*Sorex cinereus nigriculus*	Soricidae	NJ.
2	Pribilof Islands shrew	*Sorex hydrodromus*	Soricidae	AK.
2	Mt. Lyell shrew	*Sorex lyelli*	Soricidae	CA.
2	Preble's shrew	*Sorex preblei*	Soricidae	ID,MT,OR,WA,WY.
2	Homossassa shrew	*Sorex longirostris eionis*	Soricidae	FL.
1	Salt marsh vagrant shrew	*Sorex vagrans halicoetes*	Soricidae	CA.
3B	San Bernardino dusky shrew	*Sorex monticolus parvidens*	Soricidae	CA.
2	Buena Vista Lake shrew	*Sorex ornatus relictus*	Soricidae	CA.
2	Monterey ornate shrew	*Sorex ornatus salarius*	Soricidae	CA.
2	Ornate salt marsh shrew	*Sorex ornatus salicornicus*	Soricidae	CA.
1	Suisun ornate shrew	*Sorex ornatus sinuosus*	Soricidae	CA.
2	Santa Catalina shrew	*Sorex ornatus willetti*	Soricidae	CA.
3B	Ashland shrew	*Sorex trigonirostris*	Soricidae	OR.
2	Southern water shrew	*Sorex palustris punctulatus*	Soricidae	MD,NC,PA,TN,VA,WV.
2	Glacier Bay water shrew	*Sorex alaskanus*	Soricidae	AK.
2	Arizona shrew	*Sorex arizonae*	Soricidae	AZ,NM.
2	Long-tailed shrew	*Sorex dispar*	Soricidae	MA,MD,ME,NC,NH,NJ,NY,PA,TN,VA,VT,WV.
2	Destruction Island shrew	*Sorex trowbridgii destructioni*	Soricidae	WA.
3C	Northeastern pygmy shrew	*Microsorex hoyi thompsoni*	Soricidae	MA,ME,MI,NH,NY,OH,PA,VT,WI,WV.
2	Southern pygmy shrew	*Microsorex hoyi winnemana*	Soricidae	IL,IN,KY,MD,NC,OH,TN,VA
2	Martha's Vineyard short-tailed shrew	*Blarina brevicauda aloga*	Soricidae	MA.
2	Nantucket short-tailed shrew	*Blarina brevicauda compacta*	Soricidae	MA.
2	Aransas short-tailed shrew	*Blarina brevicauda plumbea*	Soricidae	TX.
2	Sherman's short-tailed shrew	*Blarina brevicauda shermani*	Soricidae	FL.
3C	Dismal Swamp short-tailed shrew	*Blarina brevicauda telmalestes*	Soricidae	NC,VA
3C	Anastasia Island mole	*Scalopus aquaticus anastasae*	Talpidae	FL.
2	Englewood mole	*Scalopus aquaticus bassi*	Talpidae	FL.
2	Presidio mole	*Scalopus aquaticus texanus*	Talpidae	TX.
3C	Star-nosed mole	*Condylura cristata parva*	Talpidae	GA,MD,NC,SC,TN,VA,WV.
2	Mariana flying fox (Rota, northern island populations)	*Pteropus mariannus mariannus*	Pteropodidae	CM.
1	Mariana flying fox (Agigun, Tinian, Saipan populations)	*Pteropus mariannus mariannus*	Pteropidae	CM.
2	Pagan Mariana flying fox (=Pagan fruit bat)	*Pteropus mariannus paganensis*	Pteropodidae	CM.
2	Samoan flying fox (=Samoan fruit bat)	*Pteropus samoensis samoensis*	Pteropodidae	AS, Western Samoa.
2	Sheath-tailed bat	*Emballonura semicaudata*	Emballonuridae	CM,GU,TT (Caroline Islands).
2	Mexican long-tongued bat	*Choeronycteris mexicana*	Phyllostomidae	AZ,CA,NM, Mexico, Central & South America.
2	California leaf-nosed bat	*Macrotus californicus*	Phyllostomidae	AZ,CA,NM, Mexico.
3A	Insular long-tongued bat	*Monophylus plethodon frater*	Phyllostomidae	PR.
2	Desmarest's fig-eating bat	*Stenoderma rufum*	Phyllostomidae	PR.
2	Eastern small-footed bat	*Myotis subulatus leibii*	Vespertilionidae	AR,CT,DE,GA,IL,IN,KY,MA,MD,ME,MO,NC,NJ, NY,OH,OK,PA,RI,TN,VA,VT,WV, Canada.
2	Occult little brown bat	*Myotis lucifugus occultus*	Vespertilionidae	AZ,CA,NM,TX, Mexico.
2	Southeastern myotis (bat)	*Myotis austroriparius*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MD,MS,NC,OK,SC, TN,TX.
2	Southwestern cave myotis (bat)	*Myotis velifer brevis*	Vespertilionidae	AZ,CA,NM.
2	Spotted bat	*Euderma maculatum*	Vespertilionidae	AZ,CA,CO,ID,MT,NM,NV,OR,UT,WY,TX, Canada, Mexico.
2	Pacific western big-eared bat	*Plecotus townsendii townsendii*	Vespertilionidae	CA,ID,OR,WA, Canada.
2	Rafinesque's (=southeastern) big-eared bat	*Plecotus rafinesquii*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MD,MS,NC,OH,OK, SC,TN,TX,VA.
2	Greater western mastiff-bat	*Eumops perotis californicus*	Molossidae	AZ,CA,NM,TX, Mexico.
2	Underwood's mastiff-bat	*Eumops underwoodi*	Molossidae	AZ, Mexico, Central America.
2	Florida mastiff-bat	*Eumops glaucinus floridanus*	Molossidae	FL.
2	Barnes' pika	*Ochotona princeps barnesi*	Ochotonidae	UT.
2	Cinnamon pika	*Ochotona princeps cinnamomea*	Ochotonidae	UT.
3C	Copenhagen Basin pika	*Ochotona princeps clamosa*	Ochotonidae	ID.
2	Lasal pika	*Ochotona princeps lasalensis*	Ochotonidae	UT.
2	Heliotrope pika	*Ochotona princeps moorei*	Ochotonidae	UT.
2	Goat Peak pika	*Ochotona princeps nigrescens*	Ochotonidae	NM.
2	Wasatch pika	*Ochotona princeps wasatchensis*	Ochotonidae	UT.
1	Riparian brush rabbit	*Sylvilagus bachmani riparius*	Leporidae	CA.
1	Lower Keys marsh rabbit	*Sylvilagus palustris hefneri*	Leporidae	FL.
3C	Micco cottontail rabbit	*Sylvilagus floridanus ammophilus*	Leporidae	FL.
2	Smiths Island cottontail rabbit	*Sylvilagus floridanus hitchensi*	Leporidae	VA.
2	Davis Mountains cottontail rabbit	*Sylvilagus floridanus robustus*	Leporidae	TX.
2	New England cottontail rabbit	*Sylvilagus transitionalis*	Leporidae	AL,GA,KY,MA,MD,ME,NC,NH,NJ,NY,PA,TN,VA, VT,WV.
2	Sierra Nevada snowshoe hare	*Lepus americanus tahoensis*	Leporidae	CA.
2	White-sided jack rabbit	*Lepus callotis gaillardi*	Leporidae	NM, Mexico.
2	Mountain beaver (Mono Basin population)	*Aplodontia rufa californica*	Aplodontidae	CA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
1	Point Arena mountain beaver	*Aplodontia rufa nigra*	Aplodontidae	CA.
2	Point Reyes mountain beaver	*Aplodontia rufa phaea*	Aplodontidae	CA.
3A	Penasco least chipmunk	*Eutamias minimus atristriatus*	Sciuridae	NM.
2	Organ Mountains Colorado chipmunk	*Eutamias quadrivittatus australis*	Sciuridae	NM.
2	Hidden Forest Uinta chipmunk	*Eutamias umbrinus nevadensis*	Sciuridae	NV.
2	Mount Ellen Uinta chipmunk	*Eutamias umbrinus sedulus*	Sciuridae	UT.
2	Palmer's chipmunk	*Eutamias palmeri*	Sciuridae	NV.
2	Wet Mountains yellow-bellied marmot	*Marmota flaviventris notioros*	Sciuridae	CO.
2	Nelson's antelope ground squirrel	*Ammospermophilus nelsoni*	Sciuridae	CA.
1	Northern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
2	Southern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
3C	Richardson's ground squirrel	*Spermophilus richardsoni nevadensis*	Sciuridae	ID,NV,OR.
2	Allen's 13-lined ground squirrel	*Spermophilus tridecemlineatus alleni*	Sciuridae	WY.
3C	White Mountains ground squirrel	*Spermophilus tridecemlineatus monticola*	Sciuridae	AZ.
2	Mohave ground squirrel	*Spermophilus mohavensis*	Sciuridae	CA.
2	Palm Springs ground squirrel	*Spermophilus tereticaudus chlorus*	Sciuridae	CA.
2	Arizona black-tailed prairie dog	*Cynomys ludovicianus arizonensis*	Sciuridae	AZ,NM,TX, Mexico.
2	Mangrove fox squirrel	*Sciurus niger avicennia*	Sciuridae	FL.
2	Sherman's fox squirrel	*Sciurus niger shermani*	Sciuridae	FL.
2	Chiricahua Nayarit squirrel	*Sciurus nayaritensis chiricahuae*	Sciuridae	AZ.
2	Santa Catalina Mountains squirrel	*Sciurus arizonensis catalinae*	Sciuridae	AZ.
2	San Bernardino flying squirrel	*Glaucomys sabrinus californicus*	Sciuridae	CA.
3C	Prince of Wales flying squirrel	*Glaucomys sabrinus griseifrons*	Sciuridae	AK.
2	Roy Prairie pocket gopher	*Thomomys mazama glacialis*	Geomyidae	WA.
2	Goldbeach western pocket gopher	*Thomomys mazama helleri*	Geomyidae	OR.
2	Louie's western pocket gopher	*Thomomys mazama louiei*	Geomyidae	WA.
2	Tacoma western pocket gopher	*Thomomys mazama tacomensis*	Geomyidae	WA.
2	Fish Spring pocket gopher	*Thomomys umbrinus abstrusus*	Geomyidae	NV.
2	Amargosa southern pocket gopher	*Thomomys umbrinus amargosae*	Geomyidae	CA.
2	Bonneville southern pocket gopher	*Thomomys umbrinus bonnevillei*	Geomyidae	UT.
2	Clear Lake pocket gopher	*Thomomys umbrinus convexus*	Geomyidae	UT.
2	San Antonio pocket gopher	*Thomomys umbrinus curtatus*	Geomyidae	NV.
2	Pistol River pocket gopher	*Thomomys umbrinus detumidus*	Geomyidae	OR.
2	Mount Ellen pocket gopher	*Thomomys umbrinus dissimilis*	Geomyidae	UT.
3C	Animas southern pocket gopher	*Thomomys umbrinus emotus*	Geomyidae	NM.
3C	Graham Mountains pocket gopher	*Thomomys umbrinus grahamensis*	Geomyidae	AZ.
2	Guadalupe southern pocket gopher	*Thomomys umbrinus guadalupensis*	Geomyidae	NM,TX.
2	Hualapai southern pocket gopher	*Thomomys umbrinus hualpaiensis*	Geomyidae	AZ.
2	Limpia southern pocket gopher	*Thomomys umbrinus limpiae*	Geomyidae	TX.
2	Mearns' southern pocket gopher	*Thomomys umbrinus mearnsi*	Geomyidae	NM.
2	Stansbury Island pocket gopher	*Thomomys umbrinus minimus*	Geomyidae	UT.
2	Prospect Valley pocket gopher	*Thomomys umbrinus muralis*	Geomyidae	AZ.
2	Antelope Island pocket gopher	*Thomomys umbrinus nesophilus*	Geomyidae	UT.
2	Cebolleta southern pocket gopher	*Thomomys umbrinus paguatae*	Geomyidae	NM.
2	Salt Gulch pocket gopher	*Thomomys umbrinus powelli*	Geomyidae	UT.
2	Pajarito southern pocket gopher	*Thomomys umbrinus quercinus*	Geomyidae	AZ.
2	Skull Valley pocket gopher	*Thomomys umbrinus robustus*	Geomyidae	UT.
2	Swasey Spring pocket gopher	*Thomomys umbrinus sevieri*	Geomyidae	UT.
2	Searchlight southern pocket gopher	*Thomomys umbrinus suboles*	Geomyidae	AZ.
2	Harquahala southern pocket gopher	*Thomomys umbrinus subsimilis*	Geomyidae	AZ.
2	Limpia Creek pocket gopher	*Thomomys umbrinus texensis*	Geomyidae	TX.
2	Mer Rouge pocket gopher	*Geomys bursarius breviceps*	Geomyidae	LA.
3C	White Sands pocket gopher	*Geomys arenarius brevirostris*	Geomyidae	NM.
2	Texas maritime pocket gopher	*Geomys personatus maritimus*	Geomyidae	TX.
2	Carrizo Springs pocket gopher	*Geomys personatus streckeri*	Geomyidae	TX.
3A	Sherman's southeastern pocket gopher	*Geomys pinetis fontanelus*	Geomyidae	GA.
3A	Goff's southeastern pocket gopher	*Geomys pinetis goffi*	Geomyidae	FL.
3B	Colonial pocket gopher	*Geomys colonus*	Geomyidae	GA.
2	Cumberland pocket gopher	*Geomys cumberlandius*	Geomyidae	GA.
2	White-eared pocket mouse	*Perognathus alticola alticola*	Heteromyidae	CA.
2	Tehachapi white-eared pocket mouse	*Perognathus alticola inexpectatus*	Heteromyidae	CA.
2	Silky pocket mouse	*Perognathus flavus goodpasteri*	Heteromyidae	AZ.
2	Los Angeles pocket mouse	*Perognathus longimembris brevinasus*	Heteromyidae	CA.
2	Pacific little pocket mouse	*Perognathus longimembris pacificus*	Heteromyidae	CA.
2	Coconino Arizona pocket mouse	*Perognathus amplus amoenus*	Heteromyidae	AZ.
2	Yavapai Arizona pocket mouse	*Perognathus amplus amplus*	Heteromyidae	AZ.
2	Wupatki Arizona pocket mouse	*Perognathus amplus cineris*	Heteromyidae	AZ.
2	San Joaquin pocket mouse	*Perognathus inornatus inornatus*	Heteromyidae	CA.
2	Salinas pocket mouse	*Perognathus inornatus psammophilus*	Heteromyidae	CA.
2	Black Mountain pocket mouse	*Perognathus intermedius nigrimontis*	Heteromyidae	AZ.
2	Fletcher dark kangaroo mouse	*Microdipodops megacephalus nasutus*	Heteromyidae	NV.
2	Desert Valley kangaroo mouse	*Microdipodops megacephalus albiventer*	Heteromyidae	NV.
2	Dolphin Island awl-toothed kangaroo rat	*Dipodomys ordii cineraceus*	Heteromyidae	UT.
2	Gunnison Island kangaroo rat	*Dipodomys microps alfredi*	Heteromyidae	UT.
2	Marble Canyon kangaroo rat	*Dipodomys microps leucotis*	Heteromyidae	AZ.
2	Dolphin Island chisel-toothed kangaroo rat	*Dipodomys microps russeolus*	Heteromyidae	UT.
2	Marysville Heerman's kangaroo rat	*Dipodomys heermanni eximus*	Heteromyidae	CA.
2	Big-eared kangaroo rat	*Dipodomys elephantinus*	Heteromyidae	CA.
2	Texas kangaroo rat	*Dipodomys elator*	Heteromyidae	OK,TX.
2	Merriam's kangaroo rat	*Dipodomys merriami frenatus*	Heteromyidae	UT.
2	Short-nosed kangaroo rat	*Dipodomys nitratoides brevinasus*	Heteromyidae	CA.
2	Pine Island rice rat	*Oryzomys palustris planirostris*	Muridae	FL.
2	Sanibel Island rice rat	*Oryzomys palustris sanibeli*	Muridae	FL.
3B	Silver rice rat	*Oryzomys argentatus*	Muridae	FL.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Chiricahua western harvest mouse	*Reithrodontomys megalotis arizonensis*	Muridae	AZ.
2	Southern marsh harvest mouse	*Reithrodontomys megalotis luxicola*	Muridae	CA.
2	Stansbury Island harvest mouse	*Reithrodontomys megalotis ravus*	Muridae	UT.
2	Santa Cruz harvest mouse	*Reithrodontomys megalotis santacruzae*	Muridae	CA.
2	Pinacate cactus mouse	*Peromyscus eremicus papagensis*	Muridae	AZ, Mexico.
2	Black Mountain cactus mouse	*Peromyscus eremicus pullus*	Muridae	AZ.
3A	Pallid oldfield beach mouse	*Peromyscus polionotus decoloratus*	Muridae	FL.
2	Santa Rosa beach mouse	*Peromyscus polionotus leucocephalus*	Muridae	FL.
2	St. Andrews beach mouse	*Peromyscus polionotus peninsularis*	Muridae	FL.
2	Anacapa deer mouse	*Peromyscus maniculatus anacapae*	Muridae	CA.
2	San Clemente deer mouse	*Peromyscus maniculatus clementis*	Muridae	CA.
2	Monomoy white-footed mouse	*Peromyscus leucopus ammodytes*	Muridae	MA.
2	Pungo white-footed mouse	*Peromyscus leucopus easti*	Muridae	VA.
2	Martha's Vineyard white-footed mouse	*Peromyscus leucopus fuscus*	Muridae	MA.
3A	Anastasia Island cotton mouse	*Peromyscus gossypinus anastasae*	Muridae	FL,GA.
3A	Chadwick Beach cotton mouse	*Peromyscus gossypinus restrictus*	Muridae	FL.
2	Palo Duro mouse	*Peromyscus comanche*	Muridae	TX.
2	Florida mouse	*Peromyscus floridanus*	Muridae	FL.
2	Yuma hispid cotton rat	*Sigmodon hispidus eremicus*	Muridae	CA,AZ, Mexico.
3C	Lower Keys cotton rat	*Sigmodon hispidus exsputus*	Muridae	FL.
2	Insular hispid cotton rat	*Sigmodon hispidus insulicola*	Muridae	FL.
3C	Micco hispid cotton rat	*Sigmodon hispidus littoralis*	Muridae	FL.
2	Yavapai Arizona cotton rat	*Sigmodon arizonae jacksoni*	Muridae	AZ.
2	Colorado River cotton rat	*Sigmodon arizonae plenus*	Muridae	CA.
2	Hot Springs cotton rat	*Sigmodon fulviventer goldmani*	Muridae	NM.
2	Southern Appalachian eastern woodrat	*Neotoma floridana haematoreia*	Muridae	GA,NC,SC.
2	Eastern woodrat	*Neotoma floridana magister*	Muridae	AL,CT,IL,IN,KY,MD,NC,NJ,NY,OH,PA,TN,VA,WV.
2	White Sands woodrat	*Neotoma micropus leucophaea*	Muridae	NM.
2	Santa Catalina Mountains woodrat	*Neotoma mexicana bullata*	Muridae	AZ.
2	San Joaquin Valley woodrat	*Neotoma fuscipes riparia*	Muridae	CA.
2	Kentucky red-backed vole	*Clethrionomys gapperi maurus*	Muridae	KY.
3B	Pymatuning red-backed vole	*Clethrionomys gapperi paludicola*	Muridae	OH,PA.
3B	Kittatiny red-backed vole	*Clethrionomys gapperi rupicola*	Muridae	PA.
2	White-footed vole	*Arborimus albipes*	Muridae	CA,OR.
2	Duke's salt marsh vole	*Microtus pennsylvanicus dukecampbelli*	Muridae	FL.
2	Potholes meadow vole	*Microtus pennsylvanicus kincaidi*	Muridae	WA.
2	Block Island meadow vole	*Microtus pennsylvanicus provectus*	Muridae	RI.
2	Penobscot meadow vole	*Microtus pennsylvanicus shattucki*	Muridae	ME.
2	Beach vole	*Microtus breweri*	Muridae	MA.
3C	Arizona montane vole	*Microtus montanus arizonensis*	Muridae	AZ,NM.
2	Pahranagat Valley montane vole	*Microtus montanus fucosus*	Muridae	NV
2	Ash Meadows montane vole	*Microtus montanus nevadensis*	Muridae	NV.
2	Virgin River montane vole	*Microtus montanus rivularis*	Muridae	UT.
2	San Pablo California vole	*Microtus californicus sanpabloensis*	Muridae	CA.
2	Owens Valley California vole	*Microtus californicus vallicola*	Muridae	CA.
2	Shaw Island Townsend's vole	*Microtus townsendii pugeti*	Muridae	WA.
2	Amak tundra vole	*Microtus oeconomus amakensis*	Muridae	AK.
2	Montague tundra vole	*Microtus oeconomus elymocetes*	Muridae	AK.
3C	Graham Mountains long-tailed vole	*Microtus longicaudus leucophaeus*	Muridae	AZ.
2	Southern rock vole	*Microtus chrotorrhinus carolinensis*	Muridae	NC,TN,VA,WV.
2	Navaho Mountain Mexican vole	*Microtus mexicanus navaho*	Muridae	AZ,UT.
3A	Louisiana prairie vole	*Microtus ochrogaster ludovicianus*	Muridae	LA,TX.
2	Round-tailed muskrat	*Neofiber alleni*	Muridae	FL,GA.
3C	Dismal Swamp bog lemming	*Synaptomys cooperi helaletes*	Muridae	NC,VA.
2	Nebraska bog lemming	*Synaptomys cooperi relictus*	Muridae	NE.
2	Kansas bog lemming	*Synaptomys cooperi paludis*	Muridae	KS.
2	Northern bog lemming	*Synaptomys borealis sphagnicola*	Muridae	ME,NH, Canada.
2	New Mexican jumping mouse	*Zapus hudsonius luteus*	Zapodidae	AZ,NM.
2	Preble's meadow jumping mouse	*Zapus hudsonius preblei*	Zapodidae	CO,WY.
2	Point Reyes jumping mouse	*Zapus trinotatus orarius*	Zapodidae	CA.
2	Sierra Nevada red fox	*Vulpes vulpes necator*	Canidae	CA,NV.
2	Swift fox	*Vulpes velox*	Canidae	CO,KS,MT,ND,NE,NM,OK,SD,TX,WY, Canada.
2	Santa Catalina Island fox	*Urocyon littoralis catalinae*	Canidae	CA.
2	San Clemente Island fox	*Urocyon littoralis clementae*	Canidae	CA.
2	San Nicolas Island fox	*Urocyon littoralis dickeyi*	Canidae	CA.
2	San Miguel Island fox	*Urocyon littoralis littoralis*	Canidae	CA.
2	Santa Cruz Island fox	*Urocyon littoralis santacruzae*	Canidae	CA.
2	Santa Rosa Island fox	*Urocyon littoralis santarosae*	Canidae	CA.
3C	Glacier (black) bear	*Ursus americanus emmonsii*	Ursidae	AK.
2	Florida black bear	*Ursus americanus floridanus*	Ursidae	FL,GA.
2	Louisiana black bear	*Ursus americanus luteolus*	Ursidae	LA,MS,TX.
2	Key Vaca raccoon	*Procyon lotor auspicatus*	Procyonidae	FL.
2	Key West raccoon	*Procyon lotor incautus*	Procyonidae	FL.
3C	Eastern marten	*Martes americana americana*	Mustelidae	MA,ME,MI,ND,NH,NY,OH,PA,VT,WI, Canada.
2	Florida long-tailed weasel	*Mustela frenata peninsulae*	Mustelidae	FL.
2	Everglades mink	*Mustela vison evergladensis*	Mustelidae	FL.
2	Florida mink	*Mustela vison lutensis*	Mustelidae	FL.
2	North American wolverine	*Gulo gulo luscus*	Mustelidae	CO,ID,MN,MT,ND,NV,UT,WY.
2	California wolverine	*Gulo gulo luteus*	Mustelidae	CA,OR,WA.
2	Channel Islands spotted skunk	*Spilogale putorius amphiala*	Mustelidae	CA.
2	Eastern hog-nosed skunk	*Conepatus leuconotus texensis*	Mustelidae	TX, Mexico.
2	Colorado hog-nosed skunk	*Conepatus mesoleucus figginsi*	Mustelidae	CO.
2	Big Thicket hog-nosed skunk	*Conepatus mesoleucus telmalestes*	Mustelidae	TX.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Southwestern otter	*Lutra canadensis sonorae*	Mustelidae	AZ,CA,CO,NM,UT.
2	North American lynx	*Felis lynx canadensis*	Felidae	AK,CO,ID,ME,MI,MN,MT,ND,NH,NV,NY,OR,UT VT,WA,WI,WY, Canada.
2	Texas margay	*Felis wiedii cooperi*	Felidae	TX, Mexico.
2	Yuma puma	*Felis concolor browni*	Felidae	AZ,CA, Mexico.
2	Wisconsin puma	*Felis concolor schorgeri*	Felidae	IA,IL,KS,MN,MO,WI, Canada.
2	Hilton Head white-tailed deer	*Odocoileus virginianus hiltonensis*	Cervidae	SC.
2	Blackbeard Island white-tailed deer	*Odocoileus virginianus nigribarbis*	Cervidae	GA.
2	Bulls Island white-tailed deer	*Odocoileus virginianus taurinsulae*	Cervidae	SC.
2	Hunting Island white-tailed deer	*Odocoileus virginianus venatoria*	Cervidae	SC.
3A	Woodland caribou (Montana population)	*Rangifer tarandus caribou*	Cervidae	MT.
2	California bighorn sheep	*Ovis canadensis californiana*	Bovidae	CA,OR,WA, Canada.
2	Peninsular bighorn sheep	*Ovis canadensis cremnobates*	Bovidae	CA, Mexico

INVERTEBRATES

SPONGES (Porifera)

3B	Muscular sponge	*Anheteromyia biceps*	Spongillidae	MI
2	Carolina sponge	*Carvomeyenia carolinensis*	Spongillidae	SC.
2	Oklawaha sponge	*Dosilia palmeri*	Spongillidae	FL, Mexico.
2	Kissimmee sponge	*Ephydatia subtilis*	Spongillidae	FL.
2	Pennsylvania sponge	*Heteromeyenia longistylis*	Spongillidae	PA.
2	Oneida sponge	*Spongilla heteroslerifa*	Spongillidae	NY.
3B	Spongy sponge	*Spongilla spongiosa*	Spongillidae	SC.

HYDROIDS (Cnidaria)

2	(No common name)	*Ostromouvia horii*		HI

FLATWORMS (Turbellaria)

2	(Planarian, no common name)	*Kenkia rhynchida*	Kenkiidae	OR.
2	(Planarian, no common name)	*Kenkia (=Macrocotyla) glandulosa*	Kenkiidae	MO,IA.
2	Culver's planarian	*Sphalloplana culveri*	Kenkiidae	WV.
3A	Holsinger's groundwater planarian	*Sphalloplana holsingeri*	Kenkiidae	VA.
2	Refton Cave planarian	*Sphalloplana pricei*	Kenkiidae	PA.
3A	Bigger's groundwater planarian	*Sphalloplana subtilis*	Kenkiidae	VA.
2	(Planarian, no common name)	*Sphalloplana virginiana*	Kenkiidae	VA.
2	(Planarian, no common name)	*Procotyla typhlops*	Kenkiidae	MD,VA.

EARTHWORMS (Annelids, Class Oligochaeta)

2	Oregon giant earthworm	*Megascolides macelfreshi*	Megascolecidae	OR.

BRANCHIOPODS (Crustaceans, Subclass Branchiopoda)

3B	Mono Lake brine shrimp	*Artemia monica*	Artemiidae	CA.

ISOPODS (Crustaceans, Order Isopoda)

2	Clifton Cave isopod	*Caecidotea barri*	Asellidae	KY.
2	(Isopod, no common name)	*Caecidotea filicispeluncae*	Asellidae	OH.
2	(Isopod, no common name)	*Caecidotea cannulus*	Asellidae	WV.
2	Franz's isopod	*Caecidotea franzi*	Asellidae	MD.
2	(Isopod, no common name)	*Caecidotea simonini*	Asellidae	WV.
2	(Isopod, no common name)	*Caecidotea sinuncus*	Asellidae	WV.
2	Bat Cave isopod	*Caecidotea macropoda*	Asellidae	OK.
2	Nickajack Cave isopod	*Caecidotea nickajackensis*	Asellidae	TN.
2	Rye Cove Cave isopod	*Lirceus culveri*	Asellidae	VA.
2	Lee County Cave isopod	*Lirceus usdagulun*	Asellidae	VA.

AMPHIPODS (Crustaceans, Order Amphipoda)

2	(Amphipod, no common name)	*Metabetaeus lohena*	Alpheidae	HI.
2	Central Missouri cave amphipod	*Allocrangonyx hubrichti*	Gammaridae	MO.
2	Oklahoma cave amphipod	*Allocrangonyx pellucidus*	Gammaridae	OK.
2	Illinois cave amphipod	*Gammarus acherondytes*	Gammaridae	IL.
2	Bousfield's amphipod	*Gammarus bousfieldi*	Gammaridae	KY.
2	Noel's amphipod	*Gammarus desperatus*	Gammaridae	NM.
2	Diminutive amphipod	*Gammarus hyalleloides*	Gammaridae	TX.
2	Pecos amphipod	*Gammarus pecos*	Gammaridae	TX.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3C	Kansas well amphipod	*Bactrurus hubrichti*	Crangonyctidae	KS,MO,OK.
3C	Anomalous spring amphipod	*Crangonyx anomalus*	Crangonyctidae	IN,KY,OH.
2	Dearolf's (=Pennsylvania) cave amphipod	*Crangonyx dearolfi*	Crangonyctidae	MD,PA.
3C	Appalachian Valley cave amphipod	*Crangonyx antennatus*	Crangonyctidae	AL,IL,TN,VA.
2	Florida cave amphipod	*Crangonyx grandimanus*	Crangonyctidae	FL.
2	Hobb's cave amphipod	*Crangonyx hobbsi*	Crangonyctidae	FL.
3C	Minor cave amphipod	*Crangonyx minor*	Crangonyctidae	IA,IL,IN,MI, Canada.
3C	Packard's cave amphipod	*Crangonyx packardi*	Crangonyctidae	IN,KY.
3C	Allegheny cave amphipod	*Stygobromus (=Stygonectes) alleghaniensis*	Crangonyctidae	MD,NY,PA.
2	Tidewater interstitial amphipod	*Stygobromus (=Apocrangonyx) araeus*	Crangonyctidae	VA.
2	Arizona cave amphipod	*Stygobromus (=Stygonectes) arizonensis*	Crangonyctidae	AZ.
2	Balcones cave amphipod	*Stygobromus (=Stygonectes) balconis*	Crangonyctidae	TX.
2	Barr's cave amphipod	*Stygobromus (=Stygonectes) barri*	Crangonyctidae	MO.
2	Bifurcated cave amphipod	*Stygobromus (=Stygonectes) bifurcatus*	Crangonyctidae	TX.
2	Bowman's cave amphipod	*Stygobromus (=Stygonectes) bowmani*	Crangonyctidae	OK.
2	Clanton's cave amphipod	*Stygobromus (=Stygonectes) clantoni*	Crangonyctidae	KS,MO.
2	Burnsville Cove cave amphipod	*Stygobromus (=Stygonectes) conradi*	Crangonyctidae	VA.
2	Cooper's cave amphipod	*Stygobromus (=Stygonectes) cooperi*	Crangonyctidae	WV.
2	Culver's cave amphipod	*Stygobromus culveri*	Crangonyctidae	WV.
2	Cascade Cave amphipod	*Stygobromus (=Styyonectes) dejectus*	Crangonyctidae	TX.
2	Elevated Spring amphipod	*Stygobromus (=Stygonectes) elatus*	Crangonyctidae	AR.
3C	Greenbrier Cave amphipod	*Stygobromus (=Stygonectes) emarginatus*	Crangonyctidae	MD,WV.
3C	Ephemeral cave amphipod	*Stygobromus (=Stygonectes) ephemerus*	Crangonyctidae	VA.
3C	Central Kentucky cave amphipod	*Stygobromus (=Stygonectes) exilis*	Crangonyctidae	AL,KY,TN.
2	Ezell's Cave amphipod	*Stygobromus (=Stygonectes) flagellatus*	Crangonyctidae	TX.
2	Franz's amphipod	*Stygobromus franzi*	Crangonyctidae	MD.
3C	Shenandoah Valley cave amphipod	*Stygobromus (=Stygonectes) gracilipes*	Crangonyctidae	MD,PA,VA,WV.
2	Grady's cave amphipod	*Stygobromus gradyi*	Crangonyctidae	CA.
2	Devil's Sinkhole amphipod	*Stygobromus (=Stygonectes) hadenoecus*	Crangonyctidae	TX.
2	Hara's cave amphipod	*Stygobromus harai*	Crangonyctidae	CA.
2	Pickle Springs amphipod	*Stygobromus heterapodus*	Crangonyctidae	MO.
2	Malheur Cave amphipod	*Stygobromus hubbsi*	Crangonyctidae	OR.
2	Tidewater amphipod	*Stygobromus (=Stygonectes) indentatus*	Crangonyctidae	VA.
3C	Iowa amphipod	*Stygobromus iowae*	Crangonyctidae	IA.
2	Long-legged cave amphipod	*Stygobromus (=Stygonectes) longipes*	Crangonyctidae	TX.
3A	Rubious Cave amphipod	*Stygobromus (=Apocrangonyx) lucifugus*	Crangonyctidae	IL.
2	MacKenzie's cave amphipod	*Stygobromus mackenziei*	Crangonyctidae	CA.
3C	Southwestern Virginia cave amphipod	*Stygobromus mackini*	Crangonyctidae	TN,VA.
2	Mountain cave amphipod	*Stygobromus (=Stygonectes) montanus*	Crangonyctidae	AR.
2	Morrison's cave amphipod	*Stygobromus (=Stygonectes) morrisoni*	Crangonyctidae	VA,WV.
2	Bath County cave amphipod	*Stygobromus (=Stygonectes) mundus*	Crangonyctidae	VA.
2	Norton's cave amphipod	*Stygobromus (=Apocrangonyx) nortoni*	Crangonyctidae	TN.
2	Pocahontas cave amphipod	*Stygobromus nanus*	Crangonyctidae	WV.
2	Onondaga Cave amphipod	*Stygobromus onondagaensis*	Crangonyctidae	MO.
3C	Oregon cave amphipod	*Stygobromus oregonensis*	Crangonyctidae	OR.
2	Ozark cave amphipod	*Stygobromus (=Stygonectes) ozarkensis*	Crangonyctidae	AR,MO,OK.
2	Minute cave amphipod	*Stygobromus (=Apocrangonyx) parvus*	Crangonyctidae	WV.
2	Peck's cave amphipod	*Stygobromus (=Stygonectes) pecki*	Crangonyctidae	TX.
2	Pizzini's amphipod	*Stygobromus (=Stygonectes) pizzinii*	Crangonyctidae	DC,MD,PA,VA.
2	Wisconsin well amphipod	*Stygobromus putealis*	Crangonyctidae	WI.
2	Redacted cave amphipod	*Stygobromus redactus*	Crangonyctidae	WV.
2	Redell's cave amphipod	*Stygobromus (=Stygonectes) redelli*	Crangonyctidae	TX.
2	Alabama well amphipod	*Stygobromus smithi*	Crangonyctidae	AL.
2	Spring cave amphipod	*Stygobromus (=Stygonectes) spinatus*	Crangonyctidae	WV.
2	Stellmack's cave amphipod	*Stygobromus (=Stygonectes) stellmacki*	Crangonyctidae	PA.
2	Subtle cave amphipod	*Stygobromus (=Apocrangonyx) subtilis*	Crangonyctidae	IL,MO.
3C	Potomac groundwater amphipod	*Stygobromus (=Stygonectes) tenuis potomacus*	Crangonyctidae	DC,MD,PA,VA.
2	Wengerors' cave amphipod	*Stygobromus wengerorum*	Crangonyctidae	CA
1	Kauai cave amphipod	*Spelaeorchestia koloana*	Talitridae	HI.
	CRAYFISHES & SHRIMPS (Crustaceans, Order Decapoda)			
2	(Shrimp, no common name)	*Antecaridina lauensis*	Atyidae	HI.
2	(Shrimp, no common name)	*Halocaridina palaheno*	Atyidae	HI.
2	Mona cave shrimp	*Typhlatya monae*	Atyidae	PR, West Indies
2	(Crayfish, no common name)	*Cambarus batchi*	Cambaridae	KY.
3C	Big South Fork crayfish	*Cambarus bouchardi*	Cambaridae	KY,TN.
2	Greensboro burrowing crayfish	*Cambarus catagius*	Cambaridae	NC.
2	New River riffle crayfish	*Cambarus chasmodactylus*	Cambaridae	NC,VA,WV.
2	Chickamauga crayfish	*Cambarus extraneus*	Cambaridae	GA,TN.
2	(Crayfish, no common name)	*Cambarus miltus*	Cambaridae	AL.
2	Obey crayfish	*Cambarus obeyensis*	Cambaridae	TN.
2	(Crayfish, no common name)	*Cambarus spicatus*	Cambaridae	SC.
2	(Crayfish, no common name)	*Cambarus tartarus*	Cambaridae	OK.
2	(Crayfish, no common name)	*Distocambarus youngineri*	Cambaridae	SC.
2	(Crayfish, no common name)	*Fallicambarus jeanae*	Cambaridae	AR.
2	Oktibbeha rivulet crayfish	*Hobbseus orconectoides*	Cambaridae	MS.
3C	Conchas crayfish	*Orconectes deanae*	Cambaridae	NM.
2	Louisville crayfish	*Orconectes jeffersoni*	Cambaridae	KY.
2	(Crayfish, no common name)	*Orconectes williami*	Cambaridae	AL.
2	Palm Springs Cave crayfish	*Procambarus acherontis*	Cambaridae	FL.
2	Jackson Prairie crayfish	*Procambarus barbiger*	Cambaridae	MS.
2	Mississippi flatwoods crayfish	*Procambarus econfina*	Cambaridae	MS.
2	Carrollton crayfish	*Procambarus gnatus*	Cambaridae	MS.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	(Crayfish, no common name)	*Procambarus echinatus*	Cambaridae	SC.
2	Pee Dee lotic crayfish	*Procambarus lepidodactylus*	Cambaridae	NC,SC.
2	(Crayfish, no common name)	*Procambarus liberorum*	Cambaridae	MS.
2	Shutispear crayfish	*Procambarus lylei*	Cambaridae	MS.
2	Bearded red crayfish	*Procambarus pogum*	Cambaridae	MS.
2	(Shrimp, no common name)	*Calliasmata pholidota*	Hippolytidae	HI.
2	(Shrimp, no common name)	*Palaemonella burnsi*	Palaemonidae	HI.
2	Texas cave shrimp	*Palaemonetes antrorum*	Palaemonidae	TX.
1	Squirrel Chimney cave shrimp	*Palaemonetes cummingi*	Palaemonidae	FL.
2	(Shrimp, no common name)	*Procaris hawaiana*	Procarididae	HI.
2	(Shrimp, no common name)	*Vetericaris chaceorum*	Procaridae	HI.
	SPIDERS (Arachnids, Order Aranea)			
2	Dolloff Cave spider	*Meta dolloff*	Araneidae	CA.
2	Torreya trap-door spider	*Cyclocosmia torreya*	Ctenizidae	FL.
2	Key gnaphosid spider	*Cesonia irvingi*	Gnaphosidae	FL.
2	Cavern sheet-web spider	*Islandiana speophila*	Lymphiidae	WV.
1	Kauai cave wolf spider (pe'e pe'e maka 'ole)	*Adelocosa anops*	Lycosidae	HI.
3C	Rosemary wolf spider	*Lycosa ericeticola*	Lycosidae	FL.
2	Lake Placid funnel wolf spider	*Sosippus placidus*	Lycosidae	FL.
2	Lost Nantahala Cave spider	*Nesticus cooperi*	Nesticidae	NC.
2	Grassy Creek Cave spider	*Nesticus dilutus*	Nesticidae	TN.
2	Crystal Caverns cave spider	*Nesticus furtivus*	Nesticidae	TN.
2	Cave Spring Cave spider	*Nesticus jonesi*	Nesticidae	AL.
2	Valentine's cave spider	*Nesticus valentinei*	Nesticidae	TN.
2	Santa Cruz telemid spider	*Telema* sp.	Telemidae	CA.
	PSEUDOSCORPIONS (Arachnids, Order Pseudoscorpiones)			
2	Dry Fork Valley cave pseudoscorpion	*Apochthonius paucispinosus*	Chthoniidae	WV.
2	Malheur pseudoscorpion	*Apochthonius malheuri*	Chthoniidae	OR.
2	Grubbs' cave pseudoscorpion	*Aphrastochthonius grubbsi*	Chthoniidae	CA.
2	Carlow's Cave pseudoscorpion	*Aphrastochthonius similis*	Chthoniidae	CA.
2	Greenbrier Valley cave pseudoscorpion	*Kleptochthonius henroti*	Chthoniidae	WV.
2	Organ Cave pseudoscorpion	*Kleptochthonius hetricki*	Chthoniidae	WV.
2	Orpheus cave pseudoscorpion	*Kleptochthonius orpheus*	Chthoniidae	WV.
2	Proserpina cave pseudoscorpion	*Kleptochthonius proserpinae*	Chthoniidae	WV.
2	Aalbu's cave pseudoscorpion	*Archeolarca aalbui*	Garypidae	CA.
2	Grand Canyon cave pseudoscorpion	*Archeolarca cavicola*	Garypidae	AZ.
2	Guadalupe cave pseudoscorpion	*Archeolarca guadalupensis*	Garypidae	TX.
2	Lacey's cave pseudoscorpion	*Larca laceyi*	Garypidae	CA.
2	Empire Cave pseudoscorpion	*Microcreagris imperialis*	Neobisiidae	CA.
2	Music Hall Cave pseudoscorpion	*Pseudogarypus orpheus*	Pseudogarypidae	CA.
2	Royal syarinid pseudoscorpion	*Chitrella regina*	Syarinidae	WV.
	HARVESTMEN (Arachnids, Order Opiliones)			
2	Edgewood blind harvestman	*Sitalcina minor*	*	CA.
	ROCKHOPPERS & BRISTLETAILS (Insects, Order Archeognatha)			
2	Hawaiian long-palp bristletail	*Machiloides heteropus*	Machilidae	HI.
2	Perkin's club-palp bristletail	*Machiloides perkinsi*	Machilidae	HI.
	SPRINGTAILS (Insects, Order Collembola)			
2	Gandy Creek cave springtail	*Pseudosinella certa*	Entomobryidae	WV.
2	Shelled cave springtail	*Pseudosinella testa*	Entomobryidae	WV.
	MAYFLIES (Insects, Order Ephemeroptera)			
2	Berner's two-winged mayfly	*Heterocleon berneri*	Baetidae	GA.
2	American sandburrowing mayfly	*Dolania americana*	Behningiidae	FL,GA,SC,NC.
2*	Yellow brachycercus mayfly	*Brachycercus flavus*	Caenidae	LA*.
2	Argo ephemerellan mayfly	*Ephemerella argo*	Ephemerellidae	GA,IL,IN,SC.
2*	Frison's seratellan mayfly	*Seratella frisoni*	Ephemerellidae	AL*,IL*,MO*.
2*	Spiculose seratellan mayfly	*Seratella spiculosa*	Ephemerellidae	TN*,NC*.
2*	Colorado burrowing mayfly	*Ephemera compar*	Ephemeridae	CO*.
2*	West Virginia burrowing mayfly	*Ephemera triplex*	Ephemeridae	WV*.
3A	Robust pentagenian burrowing mayfly	*Pentagenia robusta*	Ephemeridae	OH*.
3B	Meridion blackwater mayfly	*Pseudirion meridionalis* (synonym of *P. centralis*)	Heptageniidae	FL,GA.
2	Cahaba sandfiltering mayfly	*Homoeoneuria cahabensis*	Oligoneuridae	AL,MS.
2	Blackwater sandfiltering mayfly	*Homoeoneuria dolani*	Oligoneuridae	FL,GA,SC.
3A	Diverse isonychian mayfly	*Isonychia diversa*	Oligoneuridae	TN*.
2	Pecatonica River mayfly	*Acanthometropus pecatonica*	Siphlonuridae	IL,WI.
2	False azeletus mayfly	*Azeletus falsus*	Siphlonuridae	AZ.
	DRAGONFLIES & DAMSELFLIES (Insects, Order Odonata)			
2	Balmorhea damselfly	*Argia* sp.	Coenagrionidae	TX.
2	Sabino Canyon damselfly	*Argia* sp.	Coenagrionidae	AZ.
3C	Barrens bluet damselfly	*Enallagma recurvatum*	Coenagrionidae	MA,NY,NJ.
2	San Francisco forktail damselfly	*Ischnura gemina*	Coenagrionidae	CA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Adytum megalagrion damselfly	*Megalagrion adytum*	Coenagrionidae	HI.
2*	Fallax megalagrion damselfly	*Megalagrion amaurodytum fallax*	Coenagrionidae	HI*.
2*	Pele megalagrion damselfly	*Megalagrion amaurodytum peles*	Coenagrionidae	HI*.
2*	Waianae megalagrion damselfly	*Megalagrion amaurodytum waianaenum*	Coenagrionidae	HI*.
3A	Jugorum megalagrion damselfly	*Megalagrion jugorum*	Coenagrionidae	HI*.
2	Leptodemas megalagrion damselfly	*Megalagrion leptodemus*	Coenagrionidae	HI.
2	Molokai megalagrion damselfly	*Megalagrion molokaiense*	Coenagrionidae	HI.
3A	Nesiotes megalagrion damselfly	*Megalagrion nesiotes*	Coenagrionidae	HI*.
2	Nigrohamatum megalagrion damselfly	*Megalagrion nigrohamatum*	Coenagrionidae	HI.
2	Blackline megalagrion damselfly	*Megalagrion nigrolineatum*	Coenagrionidae	HI.
2	Oahu megalagrion damselfly	*Megalagrion oahuensis*	Coenagrionidae	HI.
2	Oceanic megalagrion damselfly	*Megalagrion oceanicum*	Coenagrionidae	HI.
1	Pacific megalagrion damselfly	*Megalagrion pacificum*	Coenagrionidae	HI.
2	Orangeblack megalagrion damselfly	*Megalagrion xanthomelas*	Coenagrionidae	HI.
2	Say's spiketail dragonfly	*Cordulegaster sayi*	Cordulegastridae	FL,GA.
2	Apalachicola twilight skimmer dragonfly	*Neurocordulia clara*	Corduliidae	AL,FL.
2	Ohio emerald dragonfly	*Somatochlora hineana*	Corduliidae	IL,OH*,IN*.
2	Big Thicket emerald dragonfly	*Somatochlora margarita*	Corduliidae	TX.
2	Banded bog skimmer dragonfly	*Williamsonia lintneri*	Corduliidae	NY,NJ,MA,RI,NH.
2	Cherokee clubtail dragonfly	*Gomphus (Gomphurus) consanguis*	Gomphidae	SC,AL,NC,TN,VA.
2	Tennessee clubtail dragonfly	*Gomphus (Gomphurus) sandrius*	Gomphidae	TN.
2	Septima's clubtail dragonfly	*Gomphus (Gomphurus) septima*	Gomphidae	AL,NC.
3B	Hudson clubtail dragonfly	*Gomphus (Hylogomphus) adelphus* (synonym of *G. brevis*)	Gomphidae	MA,NY (as name originally used).
2	Sandhills clubtail dragonfly	*Gomphus (Hylogomphus) parvidens carolinus*	Gomphidae	NC,SC.
2	Elusive clubtail dragonfly	*Gomphus (Stylurus) notatus*	Gomphidae	MD,WI, Canada, IA*,IL*,IN*,KY*,MI*,MN*, NY*,OH*,TN*,WV*,AL?*,GA?*.
2	Bronze clubtail dragonfly	*Gomphus (Stylurus) townesi*	Gomphidae	FL,AL,SC,NC,TN.
2	Extra-striped snaketail dragonfly	*Ophiogomphus anomalus*	Gomphidae	WI, Canada, ME*,NY?*,PA*.
2*	Edmund's snaketail dragonfly	*Ophiogomphus edmundo*	Gomphidae	NC*.
2	Midget snaketail dragonfly	*Ophiogomphus howei*	Gomphidae	KY,NC,NY,PA,VA,TN,MA*.
2	Alleghany snaketail dragonfly	*Ophiogomphus incurvatus alleghaniensis*	Gomphidae	WV,VA,AL,TN?.
2	Ozark snaketail dragonfly	*Ophiogomphus westfalli*	Gomphiidae	AR,MO.
2	Variegated clubtail dragonfly	*Progomphus bellei*	Gomphidae	FL,NC.
2	Wabash belted skimmer dragonfly	*Macromia wabashensis*	Macromiidae	OH*,IN*,TX.
	STONEFLIES (Insects, Order Plecoptera)			
2	Lake Tahoe benthic stonefly	*Capnia lacustra*	Capniidae	CA,NV.
2	Natchez stonefly	*Alloperla natchez*	Chloroperlidae	MS.
3A	Robert's alloperlan stonefly	*Alloperla roberti*	Chloroperlidae	IL*.
2	Chukcho stonefly	*Haploperla chukcho*	Chloroperlidae	MS.
3B	Schoolhouse Springs leuctran stonefly	*Leuctra szczytkoi*	Leuctridae	LA.
2	Shirttail Creek stonefly	*Megaleuctra sierra*	Leuctridae	CA.
2	Meltwater lednian stonefly	*Lednia tumana*	Nemouridae	MT.
2	Wahkeena Falls flightless stonefly	*Nemoura wahkeena*	Nemouridae	OR.
2	Fender's soliperlan stonefly	*Soliperla fenderi*	Peltoperlidae	WA.
3C	Georgia beloneurian stonefly	*Beloneuria georgiana*	Perlidae	GA,NC.
2	Cheaha beloneurian stonefly	*Beloneuria jamesae*	Perlidae	AL.
3C	Hanson's appalachian stonefly	*Hansoneperla appalachia*	Perlidae	KY,MD,NH,SC,TN.
2	Leon River winter stonefly	*Taeniopteryx starki*	Taeniopterygidae	TX.
	COCKROACHES (Insects, Order Blattodea)			
2	Tuna Cave roach	*Aspiduchus cavernicola*	Blaberidae	PR.
	GRASSHOPPERS & ALLIES (Insects, Order Orthoptera)			
2	Idaho pointheaded grasshopper	*Acrolophitus pulchellus*	Acrididae	ID.
2	Michigan bog grasshopper	*Appalachia arcana*	Acrididae	MI.
2	Siskiyou chloealtis grasshopper	*Chloealtis aspasma*	Acrididae	OR.
2*	Big Cedar grasshopper	*Eximacris phenax*	Acrididae	OK*.
2*	Superb grasshopper	*Eximacris (=Spharagemon) superbum*	Acrididae	TX*.
2	Lake Huron locust	*Trimerotropis huroniana*	Acrididae	MI,WI, Canada.
2	Pinaleno monkey grasshopper	*Eumorsea pinaleno*	Eumastacidae	AZ.
2	Desert monkey grasshopper	*Psychomastix deserticola*	Eumastacidae	CA,NV.
2	Howarth's cave cricket	*Caconemobius howarthi*	Gryllidae	HI.
2	Schauinsland's bush cricket	*Caconemobius schauinslandi*	Gryllidae	HI.
2	Kaumana Cave cricket	*Caconemobius varius*	Gryllidae	HI.
2	Keys scaly cricket	*Cycloptilum irregularis*	Gryllidae	FL.
2	Prairie mole cricket	*Gryllotalpa major*	Gryllidae	AR,MO,KS,OK,IL*,MS*.
2	Oahu deceptor bush cricket	*Leptogryllus deceptor*	Gryllidae	HI.
2	Laricis tree cricket	*Oecanthus laricis*	Gryllidae	MI,OH.
2	Volcanoes cave cricket	*Thaumatogryllus cavicola*	Gryllidae	HI.
2	Kauai thinfooted bush cricket	*Thaumatogryllus variegatus*	Gryllidae	HI.
2	Arizona giant sand treader cricket	*Daihinibaenetes arizonensis*	Rhaphidophoridae	AZ.
2	Kelso giant sand treader cricket	*Macrobaenetes kelsoensis*	Rhaphidophoridae	CA.
2	Coachella giant sand treader cricket	*Macrobaenetes valgum*	Rhaphidophoridae	CA.
2	Samwell Cave cricket	*Pristoceuthophilus sp.*	Rhaphidophoridae	CA.
2	Tanner's black camel cricket	*Utabaenetes tanneri*	Rhaphidophoridae	UT.
2	Kelso Jerusalem cricket	*Ammopelmatus kelsoensis*	Stenopelmatidae	CA.
2	Point Conception Jerusalem cricket	*Ammopelmatus muiu*	Stenopelmatidae	CA.
2	Coachella Valley Jerusalem cricket	*Stenopelmatus cahuilaensis*	Stenopelmatidae	CA.
2	Navajo Jerusalem cricket	*Stenopelmatus navajo*	Stenopelmatidae	AZ.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Sierra pygmy grasshopper	*Tetrix sierrana*	Tetrigidae	CA.
2 Torreya pygmy grasshopper	*Tettigidea empedonepia*	Tetrigidae	FL.
2 Nihoa banza conehead katydid	*Banza nihoae*	Tettigoniidae	HI.
2 Big Pine Key conehead katydid	*Belocephalus micanopy*	Tettigoniidae	FL.
2 Keys shortwinged conehead katydid	*Belocephalus sleighti*	Tettigoniidae	FL.
3A Remote conehead katydid	*Conocephaloides remotus*	Tettigoniidae	HI*.
2 Pinnacles shield-back katydid	*Idiostatus kathleenae*	Tettigoniidae	CA.
2 Middlekauf's shieldback katydid	*Idiostatus middlekaufi*	Tettigoniidae	CA.
3A Antioch Dunes shieldback katydid	*Neduba extincta*	Tettigoniidae	CA*.
2 Santa Monica shieldback katydid	*Neduba longipennis*	Tettigoniidae	CA.
ZOROAPTERANS (Insects, Order Zoroaptera)			
2 Swezey's zoroapteran	*Zorotypus swezeyi*	Zorotypidae	HI.
TRUE BUGS (Insects, Order Hemiptera)			
2 Saratoga Springs belostoman bug	*Belostoma saratogae*	Belostomatidae	CA.
2 Mauna Loa metrargan seed bug	*Metrarga obscura*	Lygaeidae	HI.
2 Kauai band-legged seed bug	*Neseis alternatus*	Lygaeidae	HI.
2 Mt. Haleakala seed bug	*Neseis haleakalae*	Lygaeidae	HI.
2 Villosan flightless seed bug	*Nesocryptias villosa*	Lygaeidae	HI.
2 French Frigate Shoal seed bug	*Nysius frigatensis*	Lygaeidae	HI.
2 Fullaway's seed bug	*Nysius fullawayi*	Lygaeidae	HI.
2 Necker goosefoot seed bug	*Nysius neckerensis*	Lygaeidae	HI.
2 Nihoa nysius seed bug	*Nysius nihoae*	Lygaeidae	HI.
2 Necker bunchgrass seed bug	*Nysius suffusus*	Lygaeidae	HI.
2 Bryan's oceanides seed bug	*Oceanides bryani*	Lygaeidae	HI.
2 Perkins' oceanides seed bug	*Oceanides perkinsi*	Lygaeidae	HI.
2 Rough-headed oceanides seed bug	*Oceanides rugosiceps*	Lygaeidae	HI.
2 Dry Creek cliff strider bug	*Oravelia pege*	Macroveliidae	CA.
2 Aaa water treader bug	*Cavaticovelia aaa*	Mesoveliidae	HI.
3A Phyllostegian leaf bug	*Cyrtopeltis (=Engytatus) phyllostegiae*	Miridae	HI.
2 Lanai kalanian leaf bug	*Kalania hawaiiensis*	Miridae	HI.
2 Oahu kalanian leaf bug	*Kalania sp.*	Miridae	HI.
2 Amargosa naucorid bug	*Pelocoris shoshone*	Naucoridae	CA,NV.
2 Dismal Swamp chlorochroan bug	*Chlorochroa dismalia*	Pentatomidae	VA.
2 Santa Rita Mountains chlorochroan bug	*Chlorochroa rita*	Pentatomidae	AZ.
2* Pulchrus thread bug	*Empicoris pulchrus*	Reduviidae	HI*.
2 Ana wingless thread bug	*Nesidiolestes ana*	Reduviidae	HI.
2 Mt. Tantalus wingless thread bug	*Nesidiolestes insularis*	Reduviidae	HI.
2 Robert's wingless thread bug	*Nesidiolestes roberti*	Reduviidae	HI.
2 Selium wingless thread bug	*Nesidiolestes selium*	Reduviidae	HI.
2 Smith's siacellan reduviid bug	*Siacella smithi*	Reduviidae	HI.
2 Annectans rhopalid bug	*Ithamar annectans*	Rhopalidae	HI.
2 Hawaiian rhopalid bug	*Ithamar hawaiiense*	Rhopalidae	HI.
3C Wilbur Springs shore bug	*Saldula usingeri*	Saldidae	CA.
CICADAS AND ALLIES (Insects, Order Homoptera)			
2 Redveined prairie leafhopper	*Aflexia (=Flexamia) rubranura*	Cicadellidae	WI, Canada, IL*.
2 Barrens sedge leafhopper	*Limotettix sp.*	Cicadellidae	MD.
2 Kauai parti-colored oliarus planthopper	*Oliarus consimilis*	Cixiidae	HI.
2 Oliarus wild cotton planthopper	*Oliarus discrepans*	Cixiidae	HI.
2 Lanai oliarus planthopper	*Oliarus lanaiensis*	Cixiidae	HI.
2 Lihue oliarus planthopper	*Oliarus lihue*	Cixiidae	HI.
2 Barber's Point oliarus planthopper	*Oliarus myoporicola*	Cixiidae	HI.
2 Priolan oliarus planthopper	*Oliarus priola*	Cixiidae	HI.
2 Mt. Tantalus short-wing fern planthopper	*Nesorestias filicicola*	Delphacidae	HI.
2 Iao Valley nesosydne planthopper	*Nesosydne acuta*	Delphacidae	HI.
2 Bridewell's nesosydne planthopper	*Nesosydne bridwelli*	Delphacidae	HI.
2 Nahiku nesosydne planthopper	*Nesosydne cyrtandrae*	Delphacidae	HI.
2 Glenwood nesosydne planthopper	*Nesosydne cyrtandricola*	Delphacidae	HI.
2 Kusche's nesosydne planthopper	*Nesosydne kuschei*	Delphacidae	HI.
2 Diamond Head nesosydne planthopper	*Nesosydne leahi*	Delphacidae	HI.
2 Long-footed nesosydne planthopper	*Nesosydne longipes*	Delphacidae	HI.
2 Keanae nesosydne planthopper	*Nesosydne sulcata*	Delphacidae	HI.
LACEWINGS & ALLIES (Insects, Order Neuroptera)			
2 San Francisco lacewing	*Nothochrysa californica*	Chrysopidae	CA.
2 Haleakala nesothauman spongillafly	*Nesothauma haleakalae*	Hemerobiidae	HI.
2 Cookes' spongillafly	*Pseudopsectra cookeorum*	Hemerobiidae	HI.
2 Lobe-wing spongillafly	*Pseudopsectra lobipennis*	Hemerobiidae	HI.
2 Swezey's spongillafly	*Pseudopsectra swezeyi*	Hemerobiidae	HI.
2 Usinger's spongillafly	*Pseudopsectra usingeri*	Hemerobiidae	HI.
2 Cheese-weed owlfly	*Oliarces clara*	Ithonidae	AZ,CA.
2 Molokai antlion	*Eidoleon perjurus*	Myrmeleontidae	HI.
BEETLES (Insects, Order Coleoptera)			
2 Piko anobiid beetle	*Holcobius pikoensis*	Anobiidae	HI.
2 Antioch Dunes anthicid beetle	*Anthicus antiochensis*	Anthicidae	CA.
2 Sacramento anthicid beetle	*Anthicus sacramento*	Anthicidae	CA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Beller's ground beetle	*Agonum belleri*	Carabidae	WA,OR.
2	Arbuckle Cave ground beetle	*Horologion speokoites*	Carabidae	WV.
2	Echo Cave beetle	*Pseudanophthalmus acherontis*	Carabidae	TN.
2	West Wills Valley cave beetle	*Pseudanophthalmus assimilis*	Carabidae	AL.
2	Avernus cave beetle	*Pseudanophthalmus avernus*	Carabidae	VA.
2	Benderman's cave beetle	*Pseudanophthalmus bendermani*	Carabidae	TN.
2	Limestone Cave beetle	*Pseudanophthalmus calcareus*	Carabidae	KY.
2	Catherine's cave beetle	*Pseudanophthalmus catherinae*	Carabidae	TN.
2	Little Kennedy Cave beetle	*Pseudanophthalmus cordicollis*	Carabidae	VA.
2	Deceptive cave beetle	*Pseudanophthalmus deceptivus*	Carabidae	VA.
2	New River Valley cave beetle	*Pseudanophthalmus egberti*	Carabidae	VA.
2	Engelhardt's cave beetle	*Pseudanophthalmus engelhardti*	Carabidae	TN.
2	Tapered cave beetle	*Pseudanophthalmus fastigatus*	Carabidae	GA.
2	Fowler's cave beetle	*Pseudanophthalmus fowlerae*	Carabidae	TN.
2	Icebox Cave beetle	*Pseudanophthalmus frigidus*	Carabidae	KY.
2	Georgian cave beetle	*Pseudanophthalmus georgiae*	Carabidae	GA.
2	Timber Ridge cave beetle	*Pseudanophthalmus hadenoecus*	Carabidae	WV.
2	Lee County cave beetle	*Pseudanophthalmus hirsutus*	Carabidae	TN,VA.
2	Holsinger's cave beetle	*Pseudanophthalmus holsingeri*	Carabidae	VA.
2	Garden cave beetle	*Pseudanophthalmus hortulanus*	Carabidae	VA.
2	Hubbard's cave beetle	*Pseudanophthalmus hubbardi*	Carabidae	VA.
2	Hubricht's cave beetle	*Pseudanophthalmus hubrichti*	Carabidae	VA.
2	Stone-dwelling cave beetle	*Pseudanophthalmus hypolithos*	Carabidae	KY.
2	Illinois cave beetle	*Pseudanophthalmus illinoisensis*	Carabidae	IL.
2	Searcher cave beetle	*Pseudanophthalmus inquisitor*	Carabidae	TN.
2	Baker Station Cave beetle	*Pseudanophthalmus insularis*	Carabidae	TN.
2	Crossroads cave beetle	*Pseudanophthalmus intersectus*	Carabidae	VA.
2	Grassy Cove cave beetle	*Pseudanophthalmus jonesi*	Carabidae	TN.
2	Kramer's cave beetle	*Pseudanophthalmus krameri*	Carabidae	OH.
2	Rich Mountain cave beetle	*Pseudanophthalmus krekeleri*	Carabidae	WV.
2	Lallemant's cave beetle	*Pseudanophthalmus lallemanti*	Carabidae	WV.
2	Mud-dwelling cave beetle	*Pseudanophthalmus limicola*	Carabidae	VA.
2	Long-headed cave beetle	*Pseudanophthalmus longiceps*	Carabidae	TN,VA.
2	Dry Fork Valley cave beetle	*Pseudanophthalmus montanus*	Carabidae	WV.
2	Nelson's cave beetle	*Pseudanophthalmus nelsoni*	Carabidae	VA.
3A	Nickajack Cave beetle	*Pseudanophthalmus nickajackensis*	Carabidae	TN.
2	Norton's cave beetle	*Pseudanophthalmus nortoni*	Carabidae	TN.
2	Western cave beetle	*Pseudanophthalmus occidentalis*	Carabidae	TN.
2	Ohio cave beetle	*Pseudanophthalmus ohioensis*	Carabidae	OH.
2	Pale cave beetle	*Pseudanophthalmus pallidus*	Carabidae	TN.
2	Ridgetop cave beetle	*Pseudanophthalmus paradoxus*	Carabidae	TN.
2	Thin-neck cave beetle	*Pseudanophthalmus parvicollis*	Carabidae	VA.
2	Nobletts Cave beetle	*Pseudanophthalmus paulus*	Carabidae	TN.
2	Payne's cave beetle	*Pseudanophthalmus paynei*	Carabidae	TN.
2	Petrunkevitch's cave beetle	*Pseudanophthalmus petrunkevitchi*	Carabidae	VA.
2	Natural Bridge cave beetle	*Pseudanophthalmus pontis*	Carabidae	VA.
2	South Branch Valley cave beetle	*Pseudanophthalmus potomaca potomaca*	Carabidae	WV,VA.
2	Seneca cave beetle	*Pseudanophthalmus potomaca senecae*	Carabidae	WV.
2	Overlooked cave beetle	*Pseudanophthalmus praetermissus*	Carabidae	VA.
2	Spotted cave beetle	*Pseudanophthalmus punctatus*	Carabidae	VA.
2	Tiny cave beetle	*Pseudanophthalmus pusillus*	Carabidae	TN.
2	Straley's Cave beetle	*Pseudanophthalmus quadratus*	Carabidae	VA.
2	Rogers' cave beetle	*Pseudanophthalmus rogersae*	Carabidae	KY.
2	Saint Paul cave beetle	*Pseudanophthalmus sanctipauli*	Carabidae	VA.
2	Schoolhouse cave beetle	*Pseudanophthalmus scholasticus*	Carabidae	KY.
2	Lean cave beetle	*Pseudanophthalmus scutilis*	Carabidae	TN.
2	Sequoyah cave beetle	*Pseudanophthalmus sequoyah*	Carabidae	AL.
2	Silken cave beetle	*Pseudanophthalmus sericus*	Carabidae	VA.
2	Meridith Cave beetle	*Pseudanophthalmus sidus*	Carabidae	TN.
2	Simple cave beetle	*Pseudanophthalmus simplex*	Carabidae	TN.
2	Greenbrier Valley cave beetle	*Pseudanophthalmus subaequalis*	Carabidae	WV.
2	Thomas' cave beetle	*Pseudanophthalmus thomasi*	Carabidae	VA.
2	Indian Grave Point cave beetle	*Pseudanophthalmus tiresias*	Carabidae	TN.
3A	Duck River cave beetle	*Pseudanophthalmus tullahoma*	Carabidae	TN.
2	Union County cave beetle	*Pseudanophthalmus unionis*	Carabidae	TN.
2	Blowing Cave beetle	*Pseudanophthalmus ventus*	Carabidae	TN.
2	Maiden Spring cave beetle	*Pseudanophthalmus (=Aphanotrechus) virginicus*	Carabidae	VA.
2	Wallace's cave beetle	*Pseudanophthalmus wallacei*	Carabidae	TN.
2	Roth's blind ground beetle	*Pterostichus rothi*	Carabidae	OR.
2	(Ground beetle, no common name)	*Rhadine ozarkensis*	Carabidae	AR.
2	Schaum's Blue Ridge ground beetle	*Sphaeroderus schaumi* ssp.	Carabidae	VA.
3C	Mojave rabbitbrush longhorn beetle	*Crossidius mojavensis mojavensis*	Cerambycidae	CA.
2	Sixbanded longhorn beetle	*Dryobius sexnotatus*	Cerambycidae	LA,MD,MS,OH,PA,AL*,AR*,IN*,KS*,KY*, MI*,MO*,TN*,VA*,WV*.
2	Rude's longhorn beetle	*Necydalis rudei*	Cerambycidae	CA.
2	Hawaiian Plagithymysus longhorn beetles	*Plagithymysus* ca 43 spp.	Cerambycidae	HI.
3B	Bog idol leaf beetle	*Donacia idola*	Chrysomelidae	WA*.
2	Idaho dunes tiger beetle	*Cicindela arenicola*	Cicindelidae	ID.
2*	Cazier's tiger beetle	*Cicindela cazieri*	Cicindelidae	TX*.
2*	Smyth's tiger beetle	*Cicindela chlorocephala smythi*	Cicindelidae	TX*.
3C	Columbia River tiger beetle	*Cicindela columbica*	Cicindelidae	ID,WA,OR*.
1	Northeastern beach tiger beetle	*Cicindela dorsalis dorsalis*	Cicindelidae	MA,MD,NY,NJ,RI,PA*.
2*	Oblivious tiger beetle	*Cicindela latesignata obliviosa*	Cicindelidae	CA*.
2	Coral Pink Dunes tiger beetle	*Cicindela limbata albissima*	Cicindelidae	UT.

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CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Cobblestone tiger beetle	*Cicindela marginipennis*	Cicindelidae	NH,VT,NY,NJ,OH,PA,MS,WV*.
2 Los Olmos tiger beetle	*Cicindela nevadica olmosa*	Cicindelidae	TX,NM, Mexico?.
2 Subtropical blue-black tiger beetle	*Cicindela nigrocoerula subtropica*	Cicindelidae	TX.
2* Neojuvenile tiger beetle	*Cicindela obsoleta neojuvenalis*	Cicindelidae	TX*.
2 Maricopa tiger beetle	*Cicindela oregona maricopa*	Cicindelidae	AZ.
2 Barbara Ann's tiger beetle	*Cicindela politula barbarannae*	Cicindelidae	TX.
2 Guadalupe Mountains tiger beetle	*Cicindela politula petrophila*	Cicindelidae	TX.
1 Puritan tiger beetle	*Cicindela puritana*	Cicindelidae	MD,VT,MA*,NH*,CT?*.
2 Greenest tiger beetle	*Cicindela tranquebarica viridissima*	Cicindelidae	CA.
2 Oahu nesiotes weevil	*Deinocossonus nesiotes*	Curculionidae	HI.
3C Antioch Dune weevil	*Dystricheus rotundicollis*	Curculionidae	CA.
2 Oahu heteramphus fern weevil	*Heteramphus filicum*	Curculionidae	HI.
2 Nelson's miloderes weevil	*Miloderes nelsoni*	Curculionidae	CA.
2 Rulien's miloderes weevil	*Miloderes rulieni*	Curculionidae	NV.
2 Gifford's nesotocus weevil	*Nesotocus giffordi*	Curculionidae	HI.
2* Kauai nesotocus weevil	*Nesotocus kauaiensis*	Curculionidae	HI*.
2 Munro's nesotocus weevil	*Nesotocus munroi*	Curculionidae	HI.
2 Lange's El Segundo Dune weevil	*Onychobaris langei*	Curculionidae	CA.
2 Windward Chain Oodemas weevils	*Oodemas*, 4 spp.	Curculionidae	HI.
2 Blackburn's pentarthrum weevil	*Pentarthrum blackburni*	Curculionidae	HI.
2 Obscure pentarthrum weevil	*Pentarthrum obscura*	Curculionidae	HI.
2 Hawaiian rhyncogonus snout beetles	*Rhyncogonus* 23 spp.	Curculionidae	HI.
2 Nihoa stenotrupis weevil	*Stenotrupis pritchardiae*	Curculionidae	HI.
2 Blaisdell trigonoscuta weevil	*Trigonoscuta blaisdelli*	Curculionidae	CA.
2* Brown-tassel trigonoscuta weevil	*Trigonoscuta brunnotasselata*	Curculionidae	CA*.
2 Santa Catalina Island trigonscuta weevil	*Trigonoscuta catalina*	Curculionidae	CA.
2 Dorothy's El Segundo Dune weevil	*Trigonoscuta dorothea dorothea*	Curculionidae	CA.
1 Doyen's trigonoscuta dune weevil	*Trigonoscuta doyeni*	Curculionidae	CA.
3A Fort Ross trigonoscuta weevil	*Trigonoscuta rossi*	Curculionidae	CA*.
2 Santa Cruz Island shore weevil	*Trigonoscuta stantoni*	Curculionidae	CA.
3A Yorba Linda trigonoscuta weevil	*Trigonoscuta yorbalindae*	Curculionidae	CA*.
2 Death Valley agabus diving beetle	*Agabus rumpi*	Dytiscidae	CA,NV?.
2 Bonita diving beetle	*Deronectes neomexicana*	Dytiscidae	NM,TX.
2* Fig seed diving beetle	*Desmopachria cenchramis*	Dytiscidae	FL*.
2 Texas cave diving beetle	*Haideoporus texanus*	Dytiscidae	TX.
2* Elusive hydroporus diving beetle	*Hydroporus elusivus*	Dytiscidae	NH*.
2 Folkerts' hydroporus diving beetle	*Hydroporus folkertsi*	Dytiscidae	AL.
2 Wooly hydroporus diving beetle	*Hydroporus hirsutus*	Dytiscidae	CA.
2 Leech's skyline diving beetle	*Hydroporus leechi*	Dytiscidae	CA.
2 Simple hydroporus diving beetle	*Hydroporus simplex*	Dytiscidae	CA.
2 Spangler's hydroporus diving beetle	*Hydroporus spangleri*	Dytiscidae	UT.
2* Sulphur Springs hydroporus diving beetle	*Hydroporus sulphurius*	Dytiscidae	AR*.
2 Utah hydroporus diving beetle	*Hydroporus utahensis*	Dytiscidae	UT.
3A Mono Lake hygrotus diving beetle	*Hygrotus artus*	Dytiscidae	CA*.
2 Curved-foot hygrotus diving beetle	*Hygrotus curvipes*	Dytiscidae	CA.
2 Narrow-foot hygrotus diving beetle	*Hygrotus diversipes*	Dytiscidae	WY.
2 Travertine band-thigh diving beetle	*Hygrotus fontinalis*	Dytiscidae	CA.
2 Sylvan hygrotus diving beetle	*Hygrotus sylvanus*	Dytiscidae	MN,NY*.
2* Schwarz' diving beetle	*Laccophilus schwarzi*	Dytiscidae	MD*,VA*.
2 Hatch's click beetle	*Eanus hatchi*	Elateridae	WA, Canada?.
2 Hawaiian eopenthes click beetles	*Eopenthes* 17 spp.	Elateridae	HI.
2 Necker itodacnus click beetles	*Itodacnus* 2 spp.	Elateridae	HI.
2 Wawona riffle beetle	*Atractelmis wawona*	Elmidae	CA.
2 Parker's riffle beetle	*Cylloepus parkeri*	Elmidae	AZ.
2 Brownish dubiraphian riffle beetle	*Dubiraphia brunnescens*	Elmidae	CA.
2 Giuliani's dubiraphian riffle beetle	*Dubiraphia giulianii*	Elmidae	CA.
2 Little riffle beetle	*Dubiraphia parva*	Elmidae	OK,LA.
2 Robust dubiraphian riffle beetle	*Dubiraphia robusta*	Elmidae	WI.
2 Dubiraphian riffle beetle (undescribed)	*Dubiraphia* sp.	Elmidae	ME.
2 Stephan's riffle beetle	*Heterelmis stephani*	Elmidae	AZ.
2 Marron's San Carlos riffle beetle	*Hudsonelmis marroni carolus*	Elmidae	AZ.
2 Brown's microcylloepus riffle beetle	*Microcylloepus browni*	Elmidae	MT.
2 Brown's optioservus riffle beetle	*Optioservus browni*	Elmidae	AR.
2 Pinnacles optioservus riffle beetle	*Optioservus canus*	Elmidae	CA.
2 Scott optioservus riffle beetle	*Optioservus phaeus*	Elmidae	KS.
2 Devil's Hole warm spring riffle beetle	*Stenelmis calida calida*	Elmidae	NV.
2 Moapa warm springs riffle beetle	*Stenelmis calida moapa*	Elmidae	NV.
2 Douglas stenelmis riffle beetle	*Stenelmis douglasensis*	Elmidae	MI.
2 Gannon's stenelmis riffle beetle	*Stenelmis gannoni*	Elmidae	NC,AL,VA.
2 Warm spring zaitzevian riffle beetle	*Zaitzevia thermae*	Elmidae	MT.
2 Beer's false water penny beetle	*Acneus beeri*	Eubriidae	OR.
2 Burnell's false water penny beetle	*Acneus burnelli*	Eubriidae	OR.
2 Stark's false water penny beetle	*Alabamaubria starki*	Eubriidae	AL.
2 Variegated false water penny beetle	*Dicranopselaphus variegatus*	Eubriidae	IL.
2* Dohrn's elegant eucnemid beetle	*Palecnemus dohrni*	Eucnemidae	CA*.
2 Red Hills unique whirligig beetle	*Spangleronectyrus albiventris*	Gyrinidae	AL.
2 Hungerford's crawling water beetle	*Brychius hungerfordi*	Haliplidae	MI.
2* Disjunct crawling water beetle	*Haliplus nitens*	Haliplidae	TX?*, Canada*.
2 Maureen's gymnocthebius minute moss beetle	*Gymnocthebius maureenae*	Hydraenidae	MS.
2 Maureen's hydraenan minute moss beetle	*Hydraena maureenae*	Hydraenidae	VA.
2 Animas minute moss beetle	*Limnebius aridus*	Hydraenidae	NM.
2 Texas minute moss beetle	*Limnebius texanus*	Hydraenidae	TX.
2 Utah minute moss beetle	*Limnebius utahensis*	Hydraenidae	UT.
2 Wing-shoulder minute moss beetle	*Ochthebius crassalus*	Hydraenidae	CA.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Putnam minute moss beetle	*Ochthebius putnamensis*	Hydraenidae	IN.
2	Wilbur Springs minute moss beetle	*Ochthebius reticulatus*	Hydraenidae	CA.
2	Leech's chaetarthrian water scavenger beetle	*Chaetarthria leechi*	Hydrophilidae	CA.
2	Utah chaetarthrian water scavenger beetle	*Chaetarthria utahensis*	Hydrophilidae	UT.
2	Chiricahua water scavenger beetle	*Cymbiodyta arizonica*	Hydrophilidae	AZ.
2	Ricksecker's water scavenger beetle	*Hydrochara ricksecker*	Hydrophilidae	CA.
2	Seth Forest water scavenger beetle	*Hydrochus sp.*	Hydrophilidae	MD.
2	Seclusive water scavenger beetle	*Paracymus seclusus*	Hydrophilidae	MS.
2	Florida intertidal firefly	*Micronaspis floridana*	Lampyridae	FL.
2	Everglades brownwing firefly	*Photuris brunnipennis floridana*	Lampyridae	FL.
2	Turtle Mound firefly	*Photuris sp.*	Lampyridae	FL.
2	Blind cave leiodid beetle	*Glacicavicola bathysciodes*	Leiodidae	ID.
2	Kauai flightless stag beetle	*Apterocychus honoluluensis*	Lucanidae	HI.
2	Hopping's blister beetle	*Lytta hoppingi*	Meloidae	CA.
2*	Mojave Desert blister beetle	*Lytta inseparata*	Meloidae	CA*.
2	Anthony blister beetle	*Lytta mirifica*	Meloidae	NM*, Mexico.
2*	Moestan blister beetle	*Lytta moesta*	Meloidae	CA*.
2	Molestan blister beetle	*Lytta molesta*	Meloidae	CA.
2	Morrison's blister beetle	*Lytta morrisoni*	Meloidae	CA.
2	Hawaiian proterhinid beetles	*Proterhinus* 72 spp.	Proterhinidae	HI.
2	Magazine Mountain mold beetle	*Arianops sandersoni*	Pselaphidae	AR.
2	Arizona water penny beetle	*Psephenus arizonensis*	Psephenidae	AZ.
2	White Mountains water penny beetle	*Psephenus montanus*	Psephenidae	AZ.
2	Ciervo aegialian scarab beetle	*Aegialia concinna*	Scarabaeidae	CA.
2	Crescent Dune aegialian scarab beetle	*Aegialia crescenta*	Scarabaeidae	NV.
2	Hardy's aegialian scarab beetle	*Aegialia hardyi*	Scarabaeidae	NV.
2	Large aegialian scarab beetle	*Aegialia magnifica*	Scarabaeidae	NV.
2*	Exiguous anomalan scarab beetle	*Anomala exigua*	Scarabaeidae	FL*.
2	Archbold anomalan scarab beetle	*Anomala eximia*	Scarabaeidae	FL*.
2*	Tibial scarab beetle	*Anomala tibialis*	Scarabaeidae	TX*.
2	Ford's aphodius scarab beetle	*Aphodius fordi*	Scarabaeidae	GA.
2	Aphodius tortoise commensal scarab beetle	*Aphodius troglodytes*	Scarabaeidae	FL,SC.
2	Big Dune aphodius scarab beetle	*Aphodius sp.*	Scarabaeidae	NV.
2	Crescent Dune aphodius scarab beetle	*Aphodius sp.*	Scarabaeidae	NV.
2	Sand Mountain aphodius scarab beetle	*Aphodius sp.*	Scarabaeidae	NV.
2	Big Pine Key ataenius dung beetle	*Ataenius superficialis*	Scarabaeidae	FL.
2	Woodruff's ataenius dung beetle	*Ataenius woodruffi*	Scarabaeidae	FL.
2	San Clemente Island coenonycha beetle	*Coenonycha clementina*	Scarabaeidae	CA.
2	Copris tortoise commensal scarab beetle	*Copris gopheri*	Scarabaeidae	FL.
2*	Miami roundhead scarab beetle	*Cyclocephala miamiensis*	Scarabaeidae	FL*.
2	Kelso Dune glaresis scarab beetle	*Glaresis arenata*	Scarabaeidae	CA.
2	Spiny Florida sandhill scarab beetle	*Gronocarus multispinosus*	Scarabaeidae	FL.
2	White sand bear scarab beetle	*Lichnanthe albopilosa*	Scarabaeidae	CA.
2	Bumblebee (=Pacific sand bear) scarab beetle	*Lichnanthe ursina*	Scarabaeidae	CA.
2	Scrub Island burrowing scarab beetle	*Mycotrupes pedester*	Scarabaeidae	FL.
2	Onthophagus tortoise commensal scarab beetle	*Onthophagus polyphemi*	Scarabaeidae	SC,GA,FL,AL,MS.
2	Ocala burrowing scarab beetle	*Peltotrupes youngi*	Scarabaeidae	FL.
3C	Robinson's rain scarab beetle	*Phoebetus robinsoni*	Scarabaeidae	CA.
2	Wooly Gulf dune scarab beetle	*Polylamina pubescens*	Scarabaeidae	FL.
2	Saline Valley snow-front June beetle	*Polyphylla anteronivea*	Scarabaeidae	CA.
2	Spotted Warner Valley Dunes June beetle	*Polyphylla avittata*	Scarabaeidae	UT.
2	Barbate June beetle	*Polyphylla barbata*	Scarabaeidae	CA.
2	Death Valley June beetle	*Polyphylla erratica*	Scarabaeidae	CA.
2	Atascodero June beetle	*Polyphylla nubila*	Scarabaeidae	CA.
2	Delta June beetle	*Polyphylla stellata*	Scarabaeidae	CA.
2	Andrews' dune scarab beetle	*Pseudocotalpa andrewsi*	Scarabaeidae	CA.
2	Giuliani's dune scarab beetle	*Pseudocotalpa giulianii*	Scarabaeidae	NV.
2	Frost's spring serican scarab beetle	*Serica frosti*	Scarabaeidae	FL.
2*	Tantula serican scarab beetle	*Serica tantula*	Scarabaeidae	FL*.
2	Crescent Dune serican scarab beetle	*Serica sp.*	Scarabaidae	NV.
2	Sand Mountain serican scarab beetle	*Serica sp.*	Scarabaeidae	NV.
2	Scrub palmetto flower scarab beetle	*Trigonopelastes floridana*	Scarabaeidae	FL.
2	Caracara commensal scarab beetle	*Trox howelli*	Scarabaeidae	FL.
3A	Tooth Cave blind rove beetle	*Cylindropsis sp.*	Staphylinidae	TX.
2	Black lordithon rove beetle	*Lordithon niger*	Staphylinidae	MO, Canada,AR*,CT*,DC*,GA*,IL*,KS*, KY*,MI*,NY*,NC*,OH*,PA*,TX*,VA*,WV*.
2	Globose dune beetle	*Coelus globosus*	Tenebrionidae	CA, Mexico.
1	San Joaquin dune beetle	*Coelus gracilis*	Tenebrionidae	CA.
	SCORPIONFLIES & ALLIES (Insects, Order Mecoptera)			
2	Gold rush hanging fly	*Orbittacus obscurus*	Bittacidae	CA.
	FLIES (Insects, Order Diptera)			
2	Mary Alice's smallheaded fly	*Eulonchus marialiciae*	Acroceridae	NC.
3A	Valley mydas fly	*Raphiomydas trochilus*	Apioceratidae	CA*.
2*	Antioch cophuran robberfly	*Cophura hurdi*	Asilidae	CA*.
2	Antioch efferian robberfly	*Efferia antiochi*	Asilidae	CA.
2	Hurd's metapogon robberfly	*Metapogon hurdi*	Asilidae	CA.
2	Nihoa two-spotted asteriid fly	*Bryania bipunctata*	Asteriidae	HI.
3A	Ko'olau spurwing long-legged fly	*Campsicnemus (=Eupelopteral) urabilis*	Dolichopodida.	HI*.
3A	Lanai pomace fly	*Drosophila lanaiensis*	Drosophilidae	HI*.
3A	Hawaiian chersodromian dance fly	*Chersodromia hawaiiensis*	Empididae	HI*.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Wilbur Springs shore fly	*Paracoenia calida*	Ephydridae	CA.
2	Sugarfoot moth fly	*Nanopalpus nearcticus*	Psychodidae	FL.
2	Delong's mixogaster flower fly	*Mixogaster delongi*	Syrphidae	NL.
3C	Ross's apatalestes tabanid fly	*Apatalestes rossi*	Tabanidae	CA*.
2	Florida asaphomyian tabanid fly	*Asaphomyia floridensis*	Tabanidae	FL.
2*	Texas asaphomyian tabanid fly	*Asaphomyia texanus*	Tabanidae	TX*.
3C	Belkin's dune tabanid fly	*Brennania belkini*	Tabanidae	CA, Mexico.
2	Brown merycomyian tabanid fly	*Merycomyia brunnea*	Tabanidae	FL.
3A	Volutine stonemyian tabanid fly	*Stonemyia volutina*	Tabanidae	CA*.
	BUTTERFLIES & MOTHS (Insects, Order Lepidoptera)			
3A	Chestnut ermine moth	*Argyresthia castaneela*	Argyresthiidae	NH*,VT*.
2	Green heterocrossan carposinid moth	*Heterocrossa (=Carposina) viridis*	Carposinidae	HI.
3B	Lora Aborn's moth	*Lorita abornana (synonym of L. scarificata)*	Cochylidae	CA.
3A	Chestnut casebearer moth	*Coleophora leucochrysella*	Coleophoridae	PA*.
2	Lost ethmiid moth	*Ethmia nonachella*	Ethmiidae	CO.
2	Ioxanthan looper moth	*Fletcherana ioxantha*	Geometridae	HI.
2	Geometrid moth, no common name	*Lytrosis permagnaria*	Geometridae	GA,KY,MO,TN,MS*.
3A	Kona giant looper moth	*Scotocrythra (=Acrodrepanis) megalophylla*	Geometridae	HI*.
3A	Ko'olau giant looper moth	*Scotocrythra (=Acrodrepanis) nesiotes*	Geometridae	HI*.
3A	Hawaiian hopseed looper moth	*Scotocrythra paratactis*	Geometridae	HI*.
3A	'Ola' a peppered looper moth	*Tritocleis microphylla*	Geometridae	HI*.
2*	Necker petrochroan leaf miner moth	*Petrochroa neckerensis*	Gracilariidae	HI.
2	Dun skipper	*Euphyes vestris harbisoni*	Hesperiidae	CA.
2	Dakota skipper	*Hesperia dacotae*	Hesperiidae	MN,IA,SD,ND,IL*; Canada.
2	MacNeill sooty wing skipper	*Hesperopsis gracielae*	Hesperiidae	AZ,CA,NV,UT.
2	Salt marsh skipper	*Panoquina errans (=panoquinoides e.)*	Hesperiidae	CA, Mexico.
2	Rare skipper	*Problema bulenta*	Hesperiidae	MD,VA,NC,SC,GA.
2	Wandering skipper	*Pseudocopaeodes eunus eunus*	Hesperiidae	CA,NV?,AZ?, Mexico?.
2	Laguna Mountains skipper	*Pyrgus ruralis laguna*	Hesperiidae	CA.
2	Atala butterfly	*Eumaeus atala florida*	Lycaenidae	FL.
3C	Comstock's blue butterfly	*Euphilotes (=Shijimaeoides) battoides comstocki*	Lycaenidae	CA.
2	Baking Powder Flat blue butterfly	*Euphilotes battoides ssp.*	Lycaenidae	NV.
3C	Langston's blue butterfly	*Euphilotes (=Shijimaeoides) enoptes langstoni*	Lycaenidae	CA.
2	Mattoni's blue butterfly	*Euphilotes (=Shijimaeoides) rita mattoni*	Lycaenidae	NV.
3A	Xerces blue butterfly	*Glaucopsyche xerces*	Lycaenidae	CA*.
2	Miami blue butterfly	*Hemiargus thomasi bethunebakeri*	Lycaenidae	FL.
3A	Fender's blue butterfly	*Icaricia icarioides fenderi*	Lycaenidae	OR.
2	Morro Bay blue butterfly	*Icaricia icarioides moroensis*	Lycaenidae	CA.
2	Pheres blue butterfly	*Icaricia icarioides pheres*	Lycaenidae	CA.
2	Bog elfin butterfly	*Incisalia (=Callophrys =Mitoura) lanoraiensis*	Lycaenidae	ME,NY, Canada, NH*.
3C	Doudoroff's elfin butterfly	*Incisalia (=Callophrys =Mitoura) mossi doudoroffi*	Lycaenidae	CA.
3C	Wind's elfin butterfly	*Incisalia (=Callophrys =Mitoura) mossi windi*	Lycaenidae	CA.
2	San Gabriel Mountains elfin butterfly	*Incisalia (=Callophrys =Mitoura) mossi hidakupa*	Lycaenidae	CA.
2	Karner blue butterfly	*Lycaeides melissa samuelis*	Lycaenidae	IN,MI,NH,NY,OH,WI,IL*,MN*,PA*.
3C	Clouded tailed copper butterfly	*Lycaena arota nubila*	Lycaenidae	CA.
2	Clayton's copper butterfly	*Lycaena dorcas claytoni*	Lycaenidae	ME.
2	Hermes copper butterfly	*Lycaena hermes*	Lycaenidae	CA, Mexico.
2	Sweadner's olive hairstreak butterfly	*Mitoura (=Callophrys) gryneus sweadneri*	Lycaenidae	FL.
3C	Hessel's hairstreak butterfly	*Mitoura (=Callophrys) hesseli*	Lycaenidae	GA,FL,MA,NC,NH,NJ,VA,MD*.
2	Thorne's hairstreak butterfly	*Mitoura thornei*	Lycaenidae	CA.
2	Bcharts' blue butterfly	*Philotiella speciosa bohartorum*	Lycaenidae	CA.
2	San Emigdio blue butterfly	*Plebulina (=Plebejus) emigdionis*	Lycaenidae	CA.
2	Mardon blue butterfly	*Plejebus mardon*	Lycaenidae	CA.
2	San Gabriel Mountains blue butterfly	*Plejebus saepiolus aureolus*	Lycaenidae	CA.
2	Spring Mountains blue butterfly	*Plejebus shasta charlestonensis*	Lycaenidae	NV.
2	Bartram's hairstreak butterfly	*Strymon acis bartrami*	Lycaenidae	FL.
3C	Hawaiian hairstreak butterfly	*Vaga blackburni*	Lycaenidae	HI.
3C	Kendall's yucca skipper butterfly	*Megathymus coloradensis kendalli*	Megathymidae	TX.
2	Maculated manfreda skipper butterfly	*Stallingsia maculosus*	Megathymidae	TX, Mexico.
3A	American chestnut nepticulid moth	*Ectodemia castaneae*	Nepticulidae	MD*.
3A	Phleophagan chestnut nepticulid moth	*Ectodemia phleophaga*	Nepticulidae	MD*.
2	Albarufan dagger moth	*Acronicta albarufa*	Noctuidae	MA,MD,NJ, Canada, CT*,GA*,NC*,NY*, PA*,OH*,CO*,NM*.
2	Bucholz' dart moth	*Agrotis bucholzi*	Noctuidae	NJ.
3A	'Poko' noctuid moth	*Agrotis (=Spaelotis) crinigera*	Noctuidae	HI*.
3A	Midway agrotis noctuid moth	*Agrotis (=Peridroma) fasciata*	Noctuidae	HI*.
3A	Kerr's agrotis noctuid moth	*Agrotis kerri*	Noctuidae	HI*.
3A	Laysan agrotis noctuid moth	*Agrotis (=Prodenia) laysanensis*	Noctuidae	HI*.
3A	Procellaris agrotis noctuid moth	*Agrotis procellaris*	Noctuidae	HI*.
2*	Smyth's apamea moth	*Apamea smythi*	Noctuidae	VA*,IL*.
3C	Marbled underwing moth	*Catocala marmorata*	Noctuidae	KY,NC,SC,IL*,IN*,MD*,NJ*,NY*,OH*,PA*, WA*,VT*,WV*.
2	Precious underwing moth	*Catocala preticosa*	Noctuidae	NJ,NH*,CT*,MA*,MD?*,NY*,PA*,OH*, MD*,VA*,TN*.
2	Hebard's noctuid moth	*Erythroecia hebardi*	Noctuidae	OH,NJ,VA*.
3A	Confused helicoverpan noctuid moth	*Helicoverpa confusa*	Noctuidae	HI*.
3A	Minute helicoverpan noctuid moth	*Helicoverpa minuta*	Noctuidae	HI*.
3A	Laysan dropseed noctuid moth	*Hypena (=Hesamiptis) laysanensis*	Noctuidae	HI*.
3A	Hilo hypenan noctuid moth	*Hypena (=Hesamiptis) newelli*	Noctuidae	HI*.
3A	Lovegrass noctuid moth	*Hypena (=Hesamiptris) plagiota*	Noctuidae	HI*.
3A	Kaholuamano noctuid moth	*Hypena (=Hesamiptris) senicula*	Noctuidae	HI*.
2	Lemmer's noctuid moth	*Lithophane lemmeri*	Noctuidae	NJ,NY,CT*,NC?,SC?.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2*	Noctuid moth, no common name	*Luperina trigona*	Noctuidae	TN*.
2*	Noctuid moth, no common name	*Papaipema aweme*	Noctuidae	MI*,NY*, Canada*.
2*	Rattlesnake-master borer moth	*Papaipema eryngii*	Noctuidae	IL*,IN*.
2	Decodon borer moth	*Papaipema sulphurata*	Noctuidae	MA.
2	Ceromatic noctuid moth	*Pyreferra ceromatica*	Noctuidae	AL,FL,SC,IN,AL*,CT*,MA*,ME*,NY*, Canada*.
2	Noctuid moth, no common name	*Schinia indiana*	Noctuidae	MI,MN,WI,AR?*,IL*,IN*,NC?,NS?,TX?.
2	Okefenokee zale moth	*Zale perculta*	Noctuidae	GA,FL*.
2	Florida leafwing butterfly	*Anaea troglodyta floridalis*	Nymphalidae	FL.
1	Uncompahgre fritillary butterfly	*Boloria acrocnema*	Nymphalidae	CO.
3C	Alamosa satyr butterfly	*Cercyonis meadi alamosa*	Nymphalidae	CO.
3A	Sthenele wood nymph butterfly	*Cercyonis sthenele sthenele*	Nymphalidae	CA*.
2	Oso Flaco patch butterfly	*Chlosyne leanira osoflaco*	Nymphalidae	CA.
2	Morand's checkerspot butterfly	*Euphydryas anicia morandi*	Nymphalidae	NV.
2	Mono checkerspot butterfly	*Euphydryas editha monoensis*	Nymphalidae	CA,NV.
2	Wright's checkerspot butterfly	*Euphydryas editha quino (=E. e. wrighti)*	Nymphalidae	CA, Mexico.
3C	Obsolete viceroy butterfly	*Limenitis archippus obsoletus*	Nymphalidae	AZ,CA,NM,NV, Mexico.
2	Mitchell satyr butterfly	*Neonympha (=Euptychia) mitchelli*	Nymphalidae	IN,MI,NC,NJ,OH*,MD*?.
3C	Chryxus arctic butterfly	*Oeneis chryxus valerata*	Nymphalidae	WA.
2	Tawny crescent butterfly	*Phyciodes batesi*	Nymphalidae	NC,VA,NY,MI,WI,ND,SD,MN, Canada, GA*,WV*,PA*,NJ*.
3C	Minute checkerspot butterfly	*Poladryas minuta minuta*	Nymphalidae	TX,NM.
3C	Smoky eyed brown butterfly	*Satyrodes eurydice fumosa*	Nymphalidae	CO,IL,IA,NE.
3C	Unsilvered fritillary butterfly	*Speyeria adiaste adiaste*	Nymphalidae	CA.
3A	Atossa fritillary butterfly	*Speyeria adiaste atossa*	Nymphalidae	CA*.
3C	Clemence's fritillary butterfly	*Speyeria adiaste clemencei*	Nymphalidae	CA.
2	Callippe silverspot butterfly	*Speyeria callippe callippe*	Nymphalidae	CA.
3A	Willamette silverspot butterfly	*Speyeria callippe extincta*	Nymphalidae	OR.
2	Tehachapi Mountain silverspot butterfly	*Speyeria egleis tehachapina*	Nymphalidae	CA.
3B	Hydaspe fritillary butterfly	*Speyeria hydaspe conquista*	Nymphalidae	CO*,NM*.
2	Regal fritillary butterfly	*Speyeria idalia*	Nymphalidae	MA,MD,VA,WV,PA,OH,IN,MI,IL,MO,MN,WI, IA,OK,KS,NE,SD,ND,CO,CT*,DE*,ME*, MT*,NC*,NH*,NJ*,NY*,RI*, Canada.
3C	Apache silverspot butterfly	*Speyeria nokomis apacheana*	Nymphalidae	CA,NV.
2	Blue silverspot butterfly	*Speyeria nokomis caerulescens*	Nymphalidae	AZ*, Mexico.
3B	Blueblack silverspot butterfly	*Speyeria nokomis nigrocaerulea*	Nymphalidae	AZ,NM.
3C	Mountain silverspot butterfly	*Speyeria nokomis nitocris*	Nymphalidae	AZ,NM,CO.
2	Great basin silverspot butterfly	*Speyeria nokomis nokomis*	Nymphalidae	CO,UT.
2	Behren's silverspot butterfly	*Speyeria zerene behrensii*	Nymphalidae	CA.
2	Carole's silverspot butterfly	*Speyeria zerene carolae*	Nymphalidae	NV.
2	Myrtle's silverspot butterfly	*Speyeria zerene myrtleae*	Nymphalidae	CA.
2	Henne's eucosman moth	*Eucosma hennei*	Olethreutidae	CA.
3C	San Francisco tree lupine moth	*Grapholita edwardsiana*	Olethreutidae	CA.
3A	Strohbeen's parnassian butterfly	*Parnassius clodius strohbeeni*	Papilionidae	CA*.
2	Busck's gall moth	*Carolella busckana*	Phaloniidae	CA.
3C	Catalina orange tip butterfly	*Anthocharis cethura catalina*	Pieridae	CA.
2	Andrew's marble butterfly	*Euchloe hyantis andrewsi*	Pieridae	CA.
3C	Helios yellow butterfly	*Eurema dina helios*	Pieridae	PR, Caribbean.
2*	Daecke's pyralid moth	*Crambus daecketellus*	Pyralidae	NJ*.
2*	Molokai sedge hedyleptan moth	*Hedylepta anastrepta*	Pyralidae	HI*.
2	Kohala Mountain sedge hedyleptan moth	*Hedylepta anastreptoides*	Pyralidae	HI.
2*	'Ohe hedyleptan moth	*Hedylepta asaphombra*	Pyralidae	HI*.
3A	Oahu swamp hedyleptan moth	*Hedylepta epicentra*	Pyralidae	HI*.
2*	Ola'a banana hedyleptan moth	*Hedylepta euryprora*	Pyralidae	HI*.
2*	Fullaway's banana hedyleptan moth	*Hedylepta fullawayi*	Pyralidae	HI*.
2*	Giffard's 'ohe hedyleptan moth	*Hedylepta giffardi*	Pyralidae	HI*.
2*	Kilauea pa'iniu hedyleptan moth	*Hedylepta iridias*	Pyralidae	HI*.
3A	Laysan hedyleptan moth	*Hedylepta laysanensis*	Pyralidae	HI*.
2*	Meyrick's banana hedyleptan moth	*Hedylepta meyricki*	Pyralidae	HI*.
2*	Hawaiian bean leafroller moth	*Hedylepta monogona*	Pyralidae	HI*.
2*	Maui banana hedyleptan moth	*Hedylepta musicola*	Pyralidae	HI*.
2*	Hawaiian lo'ulu hedyleptan moth	*Hedylepta pritchardii*	Pyralidae	HI*.
3A	Telegraphic hedyleptan moth	*Hedylepta telegrapha*	Pyralidae	HI*.
2	Blue margaronian moth	*Margaronia cyanomichla*	Pyralidae	HI.
2	Green margaronian moth	*Margaronia exaula*	Pyralidae	HI.
2	'Ohenaupaka oeobian moth	*Oeobia dryadopa*	Pyralidae	HI.
2	Ford's sand dune moth	*Psammobotys fordi*	Pyralidae	CA.
2	Chestnut clearwing moth	*Synanthedon castaneae*	Sesiidae	VA*,FA*,SC*,ME*,MS*,NY*.
2	Blanchards' sphinx moth	*Adhemarius blanchardorum*	Sphingidae	TX.
3C	Weist's sphinx moth	*Eumorpha wiesti*	Sphingidae	CO,NM,AZ,TX,MT.
3A	Blackburn's sphinx moth	*Manduca blackburni*	Sphingidae	HI*.
2	Fabulous green sphinx of Kauai	*Tinostoma smaragditis*	Sphingidae	HI.
3A	Chestnut leaf miner moth	*Tischeria perplexa*	Tischeriidae	VA*.
2	Stevens' tortricid moth	*Decodes stevensi*	Tortricidae	CO.
2	'Ohe'ohe leaf roller moth	*Spheterista obeobeana*	Tortricidae	HI.
2	Greenbanded 'ohe'ohe leafroller moth	*Spheterista pterotropiana*	Tortricidae	HI.
2	Wailupe leafroller moth	*Spheterista reynoldsiana*	Tortricidae	HI.
	CADDISFLIES (Insects, Order Trichoptera)			
2	Mt. Hood primitive brachycentrid caddisfly	*Eobrachycentrus gelidae*	Brachycentridae	OR.
2	Artesian agapetus caddisfly	*Agapetus artesus*	Glossosomatidae	MO.
2	Denning's agapetus caddisfly	*Agapetus denningi*	Glossosomatidae	OR*.
2	Arkansas agapetus caddisfly	*Agapetus medicus*	Glossosomatidae	AR.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	San Marcos saddle-case caddisfly	*Protoptila arca*	Glossosomatidae	TX.
2	Flint's net-spinning caddisfly	*Cheumatopsyche flinti*	Hydropsychidae	TX.
2	Helma's net-spinning caddisfly	*Cheumatopsyche helma*	Hydropsychidae	ME,KY*,TN*.
2	Vannote's net-spinning caddisfly	*Cheumatopsyche vannotei*	Hydropsychidae	PA.
2	California diplectronan caddisfly	*Diplectrona californica*	Hydropsychidae	CA.
2	Schuh's homoplectran caddisfly	*Homoplectra schuhi*	Hydropsychidae	OR.
2	Abellan hydropsyche caddisfly	*Hydropsyche abella*	Hydropsychidae	OR.
2	Buffalo Springs caddisfly	*Hydropsyche etnieri*	Hydropsychidae	TN.
2	Reisen's hydropsyche caddisfly	*Hydropsyche reiseni*	Hydropsychidae	OK.
2*	King's Creek parapsyche caddisfly	*Parapsyche extensa*	Hydropsychidae	CA*.
2	Knoxville hydroptilan micro caddisfly	*Hydroptila decia*	Hydroptilidae	TN.
2	Kite's neotrichian micro caddisfly	*Neotrichia kitae*	Hydroptilidae	MD.
2	Alsea ochrotrichian micro caddisfly	*Ochrotrichia alsea*	Hydroptilidae	OR.
2	Contorted ochrotrichian micro caddisfly	*Ochrotrichia contorta*	Hydroptilidae	MD,AR.
2	Deschutes ochrotrichian micro caddisfly	*Ochrotrichia phenosa*	Hydroptilidae	OR*.
2	Provost's ochrotrichian micro caddisfly	*Ochrotrichia provosti*	Hydroptilidae	FL.
2	Vertrees's ochrotrichian micro caddisfly	*Ochrotrichia vertreesi*	Hydroptilidae	OR.
2	Florida oxyethiran micro caddisfly	*Oxyethira florida*	Hydroptilidae	FL,TX?.
3B	Fischer's lepidostoman caddisfly	*Lepidostoma fischeri*	Lepidostomatidae	OR.
2	Goeden's lepidostoman caddisfly	*Lepidostoma goedeni*	Lepidostomatidae	OR.
1	Cold Spring caddisfly	*Lepidostoma* sp.	Lepidostomatidae	CA.
2*	Florida ceraclean longhorn caddisfly	*Ceraclea floridana*	Leptoceridae	FL*.
2	Vertrees's ceraclean caddisfly	*Ceraclea (=Athripsodes) vertreesi*	Leptoceridae	OR.
2*	Little oecetis longhorn caddisfly	*Oecetis parva*	Leptoceridae	FL*.
3A	Athens long-horned caddisfly	*Triaenodes phalacris*	Leptoceridae	OH*.
2*	Three-tooth long-horned caddisfly	*Triaenodes tridonta*	Leptoceridae	OK*,FL*.
2	Headwater chilostigman caddisfly	*Chilostigma itascae*	Limnephilidae	MN.
2	Cascades apatanian caddisfly	*Apatania (=Radema) tavala*	Limnephilidae	OR.
2	Denning's cryptic caddisfly	*Cryptochia denningi*	Limnephilidae	CA.
2	Kings Canyon cryptochian caddisfly	*Cryptochia excella*	Limnephilidae	CA.
2	Blue Mountains cryptochian caddisfly	*Cryptochia neosa*	Limnephilidae	OR.
2	Confusion caddisfly	*Cryptochia shasta*	Limnephilidae	CA.
2	Amphibious caddisfly	*Desmona bethula*	Limnephilidae	CA.
2	King's Creek ecclisomyian caddisfly	*Ecclisomyia bilera*	Limnephilidae	CA.
2*	Green Springs Mountain farulan caddisfly	*Farula davisi*	Limnephilidae	OR*.
2	Mt. Hood farulan caddisfly	*Farula jewetti*	Limnephilidae	OR.
2	Tombstone Prairie farulan caddisfly	*Farula reaperi*	Limnephilidae	OR.
1	Sagehen Creek goeracean caddisfly	*Goeracea oregona*	Limnephilidae	CA.
2	Long-tailed caddisfly	*Farula* sp.	Limnephilidae	CA.
2	Missouri glyphopsyche caddisfly	*Glyphopsyche missouri*	Limnephilidae	MO.
3C	Klamath limnephilus caddisfly	*Limnephilus alconura*	Limnephilidae	OR.
2	Fort Dick limnephilus caddisfly	*Limnephilus atercus*	Limnephilidae	CA,OR.
2	Columbia Gorge neothremman caddisfly	*Neothremma andersoni*	Limnephilidae	OR.
2	Golden-horned caddisfly	*Neothremma genella*	Limnephilidae	CA.
2	Siskiyou caddisfly	*Neothremma siskiyou*	Limnephilidae	CA.
2	Tombstone Prairie oligophlebodes caddisfly	*Oligophlebodes mostbento*	Limnephilidae	OR.
2*	Clatsop philocascan caddisfly	*Philocasca oron*	Limnephilidae	OR*.
3B	(Caddisfly, no common name)	*Psilotreta hansoni*	Odontoceridae	MA.
3B	Oregon dolophilodes caddisfly	*Dolophilodes (=Sortosa) oregona*	Philoptamidae	OR.
2	Carlson's polycentropus caddisfly	*Polycentropus carlsoni*	Polycentropodidae	SC.
2	Nearctic paduniellan caddisfly	*Paduniella nearctica*	Psychomyidae	AR.
2	Siskiyou caddisfly	*Tinodes siskiyou*	Psychomyiidae	OR.
2	Alexander's rhyacophilan caddisfly	*Rhyacophila alexanderi*	Rhyacophilidae	MT.
3B	Castle Lake rhyacophilan caddisfly	*Rhyacophila amabilis*	Rhyacophilidae	CA*.
2	Obrien rhyacophilan caddisfly	*Rhyacophila colonus*	Rhyacophilidae	OR.
2	Fender's rhyacophilan caddisfly	*Rhyacophila fenderi*	Rhyacophilidae	OR.
2	Haddock's rhyacophilan caddisfly	*Rhyacophila haddocki*	Rhyacophilidae	OR.
2	Castle Crags rhyacophilan caddisfly	*Rhyacophila lineata*	Rhyacophilidae	CA.
2	Bilobed rhyacophilan caddisfly	*Rhyacophila mosana*	Rhyacophilidae	CA.
2	Spiny rhyacophilan caddisfly	*Rhyacophila spinata*	Rhyacophilidae	CA.
2	One-spot rhyacophilan caddisfly	*Rhyacophila unipunctata*	Rhyacophilidae	OR.
2	Stannard's agarodes caddisfly	*Agarodes stannardi*	Sericostomatidae	MS,TN.
2	Zigzag blackwater caddisfly	*Agarodes ziczac*	Sericostomatidae	FL.
	ANTS, BEES, & WASPS (Insects, Order Hymenoptera)			
2*	Yellow-banded andrenid bee	*Perdita hirticeps luteocincta*	Andrenidae	CA*.
2	Antioch andrenid bee	*Perdita scitula antiochensis*	Andrenidae	CA.
2	Franklin's bumblebee	*Bombus franklini*	Apidae	OR.
2	Nihoa sclerodermus wasp	*Sclerodermus nihoensis*	Bethylidae	HI.
3C	Antioch potter wasp	*Microdynerus (=Leptochilus) arenicolus*	Eumenidae	AZ,CA,NV.
2	Nihoa eupelmus wasp	*Eupelmus nihoensis*	Eupelmidae	HI.
1	Valley oak ant	*Proceratium californicum*	Formicidae	CA.
2	Ancient ant	*Smithistruma* sp.	Formicidae	CA.
2*	Andrenoid yellow-faced bee	*Mesoprosopis andrenoides*	Hylaeidae	HI*.
3A	Lanai yellow-faced bee	*Mesoprosopis angustula*	Hylaeidae	HI*.
2	Anomalous yellow-faced bee	*Mesoprosopis anomala*	Hylaeidae	HI.
2*	Anthricinan yellow-faced bee	*Mesoprosopis anthricina*	Hylaeidae	HI*.
2*	Assimulans yellow-faced bee	*Mesoprosopis assimulans*	Hylaeidae	HI*.
3A	Blackburn's yellow-faced bee	*Mesoprosopis blackburni*	Hylaeidae	HI*.
2*	Bluewing yellow-faced bee	*Mesoprosopis caeruleipennis*	Hylaeidae	HI*.
2*	Chlorostictan yellow-faced bee	*Mesoprosopis chlorosticta*	Hylaeidae	HI*.
2*	Comes yellow-faced bee	*Mesoprosopis comes*	Hylaeidae	HI*.
2*	Conehead yellow-faced bee	*Mesoprosopis coniceps*	Hylaeidae	HI*.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3A	Connected yellow-faced bee	*Nesoprosopis connectens*	Hylaeidae	HI*.
2*	Crabronoid yellow-faced bee	*Nesoprosopis crabronoides*	Hylaeidae	HI*.
2*	Difficult yellow-faced bee	*Nesoprosopis difficilis*	Hylaeidae	HI*.
2*	Dimidiatan yellow-faced bee	*Nesoprosopis dimidiata*	Hylaeidae	HI*.
3A	Erythrodeme yellow-faced bee	*Nesoprosopis erythrodenas*	Hylaeidae	HI*.
2*	Easy yellow-faced bee	*Nesoprosopis facilis*	Hylaeidae	HI*.
2*	Fern yellow-faced bee	*Nesoprosopis filicum*	Hylaeidae	HI*.
3A	Finitiman yellow-faced bee	*Nesoprosopis finitima*	Hylaeidae	HI*.
2	Very yellow-faced bee	*Nesoprosopis flavifrons*	Hylaeidae	HI.
2*	Yellow-foot yellow-faced bee	*Nesoprosopis flavipes*	Hylaeidae	HI*.
2	Darkwing yellow-faced bee	*Nesoprosopis fuscipennis*	Hylaeidae	HI.
2*	Shadowfoot darkwing yellow-faced bee	*Nesoprosopis fuscipennis obscuripes*	Hylaeidae	HI*.
2*	Haleakala yellow-faced bee	*Nesoprosopis haleakalae*	Hylaeidae	HI.
3A	Hilaris yellow-faced bee	*Nesoprosopis hilaris*	Hylaeidae	HI*.
2*	Hirsute yellow-faced bee	*Nesoprosopis hirsutula*	Hylaeidae	HI*.
3A	Monocolor yellow-faced bee	*Nesoprosopis homeochroma*	Hylaeidae	HI*.
2*	Hostile yellow-faced bee	*Nesoprosopis hostilis*	Hylaeidae	HI*.
2*	Hulan yellow-faced bee	*Nesoprosopis hula*	Hylaeidae	HI*.
2*	Insignis yellow-faced bee	*Nesoprosopis insignis*	Hylaeidae	HI*.
2*	Kauai yellow-faced bee	*Nesoprosopis kauaiensis*	Hylaeidae	HI*.
2*	Koa yellow-faced bee	*Nesoprosopis koae*	Hylaeidae	HI*.
2*	Kona yellow-faced bee	*Nesoprosopis kona*	Hylaeidae	HI*.
2*	Laetan yellow-faced bee	*Nesoprosopis laeta*	Hylaeidae	HI*.
3A	Broadhead yellow-faced bee	*Nesoprosopis laticeps*	Hylaeidae	HI*.
2*	Longhead yellow-faced bee	*Nesoprosopis longiceps*	Hylaeidae	HI*.
3A	Maui yellow-faced bee	*Nesoprosopis mauiensis*	Hylaeidae	HI*.
3A	Melanothrix yellow-faced bee	*Nesoprosopis melanothrix*	Hylaeidae	HI*.
3A	Mutatan yellow-faced bee	*Nesoprosopis mutata*	Hylaeidae	HI*.
3A	Molokai yellow-faced bee	*Nesoprosopis neglecta*	Hylaeidae	HI*.
3A	Snowy yellow-faced bee	*Nesoprosopis nivalis*	Hylaeidae	HI*.
2*	Obscuratan yellow-faced bee	*Nesoprosopis obscurata*	Hylaeidae	HI*.
2*	Ombrias yellow-faced bee	*Nesoprosopis ombrias*	Hylaeidae	HI*.
3A	Pele yellow-faced bee	*Nesoprosopis pele*	Hylaeidae	HI*.
2	Perkin's yellow-faced bee	*Nesoprosopis perkinsiana*	Hylaeidae	HI.
3A	Perspicuan yellow-faced bee	*Nesoprosopis perspicua*	Hylaeidae	HI*.
3A	Psammobian yellow-faced bee	*Nesoprosopis psammobia*	Hylaeidae	HI*.
2*	Furry yellow-faced bee	*Nesoprosopis pubescens*	Hylaeidae	HI*.
2*	Redtail yellow-faced bee	*Nesoprosopis rubrocaudatus*	Hylaeidae	HI*.
3A	Rugulose yellow-faced bee	*Nesoprosopis rugulosa*	Hylaeidae	HI*.
2*	Satellus yellow-faced bee	*Nesoprosopis satellus*	Hylaeidae	HI*.
3A	Bristlefront yellow-faced bee	*Nesoprosopis setosifrons*	Hylaeidae	HI*.
2*	Simple yellow-faced bee	*Nesoprosopis simplex*	Hylaeidae	HI*.
2*	Specular yellow-faced bee	*Nesoprosopis specularis*	Hylaeidae	HI*.
2*	Sphecodoid yellow-faced bee	*Nesoprosopis sphecodoides*	Hylaeidae	HI*.
2*	Unique yellow-faced bee	*Nesoprosopis unica*	Hylaeidae	HI*.
2*	Vicinan yellow-faced bee	*Nesoprosopis vicina*	Hylaeidae	HI*.
2*	Volatile yellow-faced bee	*Nesoprosopis volatilis*	Hylaeidae	HI*.
2	Antioch mutillid wasp	*Myrmosula (Myrmosa) pacifica*	Mutillidae	CA.
2	Hawaiian deinomimesan sphecid wasp	*Deinomimesa hawaiiensis*	Sphecidae	HI.
2	Puna deinomimesan sphecid wasp	*Deinomimesa punae*	Sphecidae	HI.
2	Giffard's ectemnius sphecid wasp	*Ectemnius (=Mesocrabo) giffardi*	Sphecidae	HI.
2	Short-foot ectemnius sphecid wasp	*Ectemnius (=Oreocrabro) curtipes*	Sphecidae	HI.
2	Brown cross ectemnius sphecid wasp	*Ectemnius (=Oreocrabro) fulvicrus*	Sphecidae	HI.
2	Haleakala ectemnius sphecid wasp	*Ectemnius (=Oreocrabro) haleakalae*	Sphecidae	HI.
2	Bidecoratus sphecid wasp	*Ectemnius (=Mesocrabo) bidecoratus*	Sphecidae	HI.
2	Redheaded sphecid wasp	*Eucerceris ruficeps*	Sphecidae	CA*,NV.
2	Kauai nesomimesan sphecid wasp	*Nesomimesa kauaiensis*	Sphecidae	HI.
2	Perkins' nesomimesan sphecid wasp	*Nesomimesa perkinsi*	Sphecidae	HI.
2	Shade-winged nesomimesan sphecid wasp	*Nesomimesa sciopteryx*	Sphecidae	HI.
2*	Antioch sphecid wasp	*Philanthus nasalis*	Sphecidae	CA*.
2	Niihau odynerus vespid wasp	*Odynerus niihauensis*	Vespidae	HI.
2	Soror odynerus vespid wasp	*Odynerus soror*	Vespidae	HI.
	MILLIPEDES (Class Diplopoda)			
2	(Millipede, no common name)	*Toltecus chihuanus*	Atopetholidae	NM, Mexico.
	SNAILS (Mollusks, Class Gastropoda)			
2	(Snail, no common name)	*Neritilia hawaiiensis* (Kay,1979)	Neritidae	HI.
2	Tulotoma (Alabama livebearing snail)	*Tulotoma magnifica* (Conrad, 1834)	Viviparidae	AL.
2	(Snail, no common name)	*Valvata utahensis* Call, 1884	Valvatidae	IL,UT.
2	Newcomb's littorine snail	*Algamorda newcombiana (=Littorina subrotunda)* (Carpenter, 1865)	*Littorinidae*	*CA,WA,OR.*
2	Tumbling Creek cavesnail	*Antrobia culveri* (Hubricht, 1971)	Hydrobiidae	MO.
2	Bylas springsnail	*Apachecoccus arizonae* Taylor, 1987	Hydrobiidae	AZ.
2	Blue Spring hydrobe	*Aphaostracon isthenes* (Thompson, 1968)	Hydrobiidae	FL.
2	Wekiwa hydrobe	*Aphaostracon monas* (Pilsbry, 1899)	Hydrobiidae	FL.
2	Dense hydrobe	*Aphaostracon pycnus* (Thompson, 1968)	Hydrobiidae	FL.
2	Fenney Spring hydrobe	*Aphaostracon xynoelictus* (Thompson, 1968)	Hydrobiidae	FL.
2	Crystal siltsnail (=helicoid spring snail)	*Cincinnatia helicogyra* (Thompson, 1968)	Hydrobiidae	FL.
2	Ichetucknee siltsnail	*Cincinnatia sica* (Thompson, 1968)	Hydrobiidae	FL.
2	Enterprise siltsnail	*Cincinnatia monroensis* (Dall, 1885)	Hydrobiidae	FL.
2	Pygmy siltsnail	*Cincinnatia parva* (Thompson, 1968)	Hydrobiidae	FL.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Ponderous siltsnail (=Ponderous spring snail)	*Cincinnatia ponderosa* (Thompson, 1968)	Hydrobiidae	FL.
2	Seminole siltsnail (=Seminole Spring snail)	*Cincinnatia vanhyningi* (Vanatta, 1934)	Hydrobiidae	FL.
2	Wekiwa siltsnail (=Wekiwa Spring snail)	*Cincinnatia wekiwae* (Thompson, 1968)	Hydrobiidae	FL.
2	Genus (no common names)	*Clappia* 2 spp.	Hydrobiidae	AL.
2	Phantom cave snail	*Cochliopa texana* Pilsbry, 1935	Hydrobiidae	TX.
2	Moapa pebblesnail(=Muddy Valley turban snail)	*Fluminicola avernalis* (Pilsbry, 1935)	Hydrobiidae	NV.
2	Columbia pebblesnail (=Great Columbia River spire snail)	*Fluminicola (=Lithoglyphus) columbianus* (Hemphill in Pilsbry, 1899)	Hydrobiidae	ID,OR,WA.
2	Pahranagat pebblesnail(=Pahranagat Valley turban snail)	*Fluminicola merriami* (Pilsbry and Belcher, 1892)	Hydrobiidae	NV.
3A	Longstreet Spring snail	*'Fluminicola'* sp.	Hydrobiidae	NV.
1	Chupadera springsnail	*'Fontelicella' chupaderae* Taylor, 1987	Hydrobiidae	NM.
2	Davis County springsnail	*'Fontelicella' davisi* Taylor, 1987	Hydrobiidae	TX.
1	Gila springsnail	*'Fontelicella' gilae* Taylor, 1987	Hydrobiidae	NM.
2	Presidio County springsnail	*'Fontelicella' metcalfi* Taylor, 1987	Hydrobiidae	TX.
1	Socorro springsnail	*'Fontelicella' neomexicana* (Pilsbry, 1916)	Hydrobiidae	NM.
2	Pecos springsnail	*'Fontelicella' pecosensis* Taylor, 1987	Hydrobiidae	NM.
1	Roswell spring snail	*'Fontelicella' roswellensis* Taylor, 1987	Hydrobiidae	NM.
1	New Mexico hotspring snail	*'Fontelicella' thermalis* Taylor, 1987	Hydrobiidae	NM.
2	Three Forks springsnail	*'Fontelicella' trivialis* (Taylor, 1987)	Hydrobiidae	AZ.
2	Tapered cavesnail	*Fontigens holsingeri* (Hubricht, 1976)	Hydrobiidae	WV.
2	Greenbrier cavesnail	*Fontigens turritella* (Hubricht, 1976)	Hydrobiidae	WV.
2	Mimic cavesnail	*Phreatodrobia imitata* (Herschler and Longley, 1986)	Hydrobiidae	TX.
2	Ocmulgee marstonia (snail)	*Pyrgulopsis (=Marstonia) agarhecta* (Thompson, 1969)	Hydrobiidae	GA.
2	Grand Wash springsnail	*Pyrgulopsis bacchus* Hershler, 1988	Hydrobiidae	AZ.
2	Beaver pond marstonia (snail)	*Pyrgulopsis (=Marstonia) castor* (Thompson, 1977)	Hydrobiidae	GA.
1	Crystal Spring springsnail	*Pyrgulopsis cristalis* Hershler and Sada, 1987	Hydrobiidae	NV
2	Kingman springsnail	*Pyrgulopsis conicus* Hershler, 1988	Hydrobiidae	AZ.
3C	Desert springsnail (=St George snail)	*Pyrgulopsis (=Nanicola,=Fontelicella) deserta* (Pilsbry, 1916)	Hydrobiidae	UT,AZ.
1	Ash Meadows pebblesnail (=Point of Rocks Spring snail)	*Pyrgulopsis erythropoma* (Pilsbry, 1899)	Hydrobiidae	NV.
1	Fairbanks springsnail	*Pyrgulopsis fairbanksensis* Hershler and Sada, 1987	Hydrobiidae	NV
2	Idaho springsnail	*Pyrgulopsis (=Fontelicella) idahoensis* (Pilsbry, 1933)	Hydrobiidae	ID.
1	Elongate-gland springsnail	*Pyrgulopsis isolatus* Hershler and Sada, 1987	Hydrobiidae	NV
2	Verde Rim springsnail	*Pyrgulopsis glandulosus* Hershler, 1988	Hydrobiidae	AZ.
2	Oasis Valley springsnail	*Pyrgulopsis (=Fontelicella) micrococcus* (Pilsbry, 1893)	Hydrobiidae	NV.
2	Montezuma Well springsnail	*Pyrgulopsis montezumensis* Hershler, 1988	Hydrobiidae	AZ.
2	Page springsnail	*Pyrgulopsis morrisoni* Hershler, 1988	Hydrobiidae	AZ.
1	Distal-gland springsnail (=Large-gland Nevada spring snail)	*Pyrgulopsis nanus* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Royal (=obese) marstonia (snail)	*Pyrgulopsis (=Marstonia) ogmoraphe* (Thompson, 1977)	Hydrobiidae	TN.
2	Armored (=thick-shelled) marstonia	*Pyrgulopsis (=Marstonia) pachyta* (Thompson, 1977)	Hydrobiidae	AL.
1	Median-gland Nevada springsnail	*Pyrgulopsis pisteri* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Jackson Lake springsnail (=Elk Island snail)	*Pyrgulopsis (=Fontelicella) robusta* (Walker, 1908)	Hydrobiidae	WY.
2	Brown springsnail	*Pyrgulopsis solus* Hershler, 1988	Hydrobiidae	AZ.
2	Fossil springsnail	*Pyrgulopsis simplex* Hershler, 1988	Hydrobiidae	AZ.
2	Huachuca springsnail	*Pyrgulopsis thompsoni* Hershler, 1988	Hydrobiidae	AZ, Mexico.
2	Sparrow pebblesnail	*Somatogyrus parvulus* (Tryon, 1865)	Hydrobiidae	TN.
2	Savannah pebblesnail	*Somatogyrus tenax* (Thompson, 1969)	Hydrobiidae	GA.
2	Sculpin snail	*Stiobia nana* (Thompson, 1978)	Hydrobiidae	AL.
1	Diamond Y Spring snail	*Tryonia adamantina* Taylor, 1987	Hydrobiidae	TX.
1	Alamosa springsnail	*Tryonia alamosae* Taylor, 1987	Hydrobiidae	NM.
1	Sportinggoods tryonia snail	*Tryonia angulata* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Brune's tryonia snail	*Tryonia brunei* Taylor, 1987	Hydrobiidae	TX.
2	Cheatum's snail (Phantom tryonia)	*Tryonia cheatumi* (Pilsbry, 1935)	Hydrobiidae	TX.
2	Grated tryonia (=White River snail)	*Tryonia clathrata* Stimpson, 1865	Hydrobiidae	NV.
1	Point of Rocks tryonia snail	*Tryonia elata* Hershler and Sada, 1987	Hydrobiidae	NV.
1	Minute tryonia snail (=minute slender tryonia snail)	*Tryonia ericae* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Gila tryonia snail	*Tryonia gilae* Taylor, 1987	Hydrobiidae	AZ.
2	Mimic tryonia (=California brackish water snail)	*Tryonia imitator* (Pilsbry, 1899)	Hydrobiidae	CA.
2	Koster's springsnail	*Tryonia kosteri* Taylor, 1987	Hydrobiidae	NM.
2	Quitobaquito tryonia	*Tryonia quitobaquitae* Hershler, 1988	Hydrobiidae	AZ.
1	Gonzales Spring snail	*Tryonia stocktonensis* Taylor, 1987	Hydrobiidae	TX.
2	Amargosa tryonia snail (=Amargosa & small solid tryonia)	*Tryonia variegata* Hershler and Sada, 1987	Hydrobiidae	NV.
2	San Bernadino springsnail	*Yaquicoccus bernardinus* Taylor, 1987	Hydrobiidae	AZ.
1	Virile Amargosa snail	Genus and species undescribed	Hydrobiidae	NV.
1	Bliss Rapids snail	Genus and species undescribed	Hydrobiidae	ID.
2	Badwater snail	*Assiminea infima* Berry, 1947	Assimineidae	CA.
1	Pecos assiminea snail	*Assiminea pecos* Taylor, 1987	Assimineidae	NM,TX.
3B	Anthony's river snail	*Athearnia anthonyi* (Redfield, 1854)	Pleuroceridae	GA,TN.
2	Black-crest elimia (=Albany snail)	*Elimia (=Goniobasis) albanyensis* (Lea, 1864)	Pleuroceridae	FL.
3B	Indiana river snail	*Goniobasis semicarinata indianensis* (Pilsbry, 1903)	Pleuroceridae	IN.
1	Spiny riversnail	*Io fluvialis* (Say, 1834)	Pleuroceridae	TN,VA.
2	Boulder (=crass river) snail	*Leptoxis (=Athearnia) crassa* (Haldeman, 1841)	Pleuroceridae	GA,TN.
2	Onyx rocksnail (=mainstream river snail)	*Leptoxis praerosa* (Say, 1821)	Pleuroceridae	KY,TN.
3B	Umbilicate rocksnail (=Umbilicate river snail)	*Leptoxis subglubosa umbilicata* (Weatherby, 1876)	Pleuroceridae	TN.
2	Armored rocksnail (=armigerous river snail)	*Lithasia armigera* (Say, 1821)	Pleuroceridae	KY.
2	Helmet rocksnail (=Dutton's river snail)	*Lithasia duttoniana* (Lea, 1841)	Pleuroceridae	TN.
2	Ornate rocksnail (=geniculate river snail)	*Lithasia geniculata* (Haldeman, 1840)	Pleuroceridae	KY,TN.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories)

CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Rugnose rocksnail (=Jay's river snail)	*Lithasia jayana* (Lea, 1841)	Pleuroceridae	TN.
2	Warty rocksnail (=Elk River file snail)	*Lithasia lima* (Conrad, 1834)	Pleuroceridae	TN,AL.
3C	Small geniculate river snail	*Lithasia pinguis* (Lea, 1852)	Pleuroceridae	TN.
2	Muddy rocksnail (=rugged river snail)	*Lithasia salebrosa* (Conrad, 1834)	Pleuroceridae	TN.
2	Varicose rocksnail (=verrucose file snail)	*Lithasia verrucosa* (Rafinesque, 1820)	Pleuroceridae	KY,TN.
2	Shortface lanx (=giant Columbia River limpet)	*Fisherola nuttalli* (Haldeman, 1841)	Lymnaeidae	ID,OR,WA.
3B	Spruce Creek king's crown	*Melongena* sp.	Melongenidae	FL.
3A	Fish Springs marshsnail (=Fish Springs pond snail)	*Stagnicola pilsbryi* (Hemphill, 1890)	Lymnaeidae	UT.
2	Thickshell pondsnail (=Utah band snail)	*Stagicola utahensis (=Lymnaea kingii)* (Call, 1844	Lymnaeidae	UT.
2	Jackson Lake snail	*Helisoma (Carinifex) jacksonense* (Henderson, 1932)	Planorbidae	WY.
3C	New Mexico rams-horn (snail)	*Pecosorbis kansasensis* (Case, 1966)	Planorbidae	NM,TX.
2	Magnificent (=Cape Fear) rams horn	*Planorbella (=Helisoma) magnifica* (Pilsbry, 1903)	Planorbidae	NC.
2	Acorn rams-horn	*Planorbella multivolvis* (Case, 1847)	Planorbidae	MI.
2	Greenfield rams-horn	*Taphius eucosmius eucosmius* (Bartsch, 1908)	Planorbidae	NC.
1	Snake River physa snail	*Physa* sp.	Physidae	ID.
3B	Comanche physa (=Diamond-Y pond snail)	*Physella bottomeri (=P. virgata bottomeri)* (Clench, 1924)	Physidae	TX.
2	Fish Lake physa (=Fish Lake snail)	*Physella (=Stenophysa) microstriata* (Chamberlain & Berry, 1930)	Physidae	UT.
2	Cave physa (=Wyoming cave snail)	*Physella (=Physa) spelunca* (Turner & Clench, 1925)	Physidae	WY.
2	Utah physa (=Utah bubble snail)	*Physella (=Physa) utahensis* (Clench, 1925)	Physidae	UT.
2	Wet-rock physa (=Zion Canyon snail)	*Physella (=Physa) zionis* (Pilsbry, 1905)	Physidae	UT.
2	Genus (no common names)	*Perdicella* 7 spp.	Achatinellidae	HI.
2	Short Samoan tree snail	*Samoana abbreviata* (Mousson, 1869)	Partulidae	American Samoa.
2	Genus (Snails, no common names)	*Carelia* ca 12 spp.	Amastridae	HI*.
2	San Clemente Island blunt-top snail (=Insular birddrop)	*Sterkia clementina* (Sterki, 1890)	Pupillidae	CA.
2	Alabama vertigo	*Vertigo alabamensis* Clapp, 1915	Pupillidae	AL.
2	Briarton Pleistocene snail	*Vertigo briarensis* (Leonard, 1972)	Pupillidae	MN,IA,WI.
2	Keys vertigo	*Vertigo hebardi* Vannatta, 1912	Pupillidae	FL.
2	Hubricht's vertigo	*Vertigo hubrichti* (Pillsbry, 1934)	Pupillidae	MN,IA,WI
2	Meramac River vertigo	*Vertigo meramacensis* (Van DaVender, 1977)	Pupillidae	IA,MO.
2	Occult vertigo	*Vertigo occulta* (Leonard, 1972)	Pupillidae	IA,MN.
2	Iowa Pleistocene vertigo	*Vertigo* sp.	Pupillidae	IA.
2	(Snail, no common name)	*Catinella gelida* (Baker, 1927)	Succineidae	IA
2	Kanab ambersnail	*Oxyloma haydeni kanabensis* Pilsbry, 1948	Succineidae	UT.
2	Minnesota Pleistocene succineid	*Succinea* sp.	Succineidae	MN,IA.
2	Iowa Pleistocene succineid	*Succinea* sp.	Succineidae	IA,MN.
3C	Florida treesnail	*Liguus fasciatus* (Muller, 1774)	Bulimulidae	FL.
2	Shaggy coil	*Helicodiscus diadema* Grimm, 1967	Helicodiscidae	VA.
2	Toothy coil	*Helicodiscus hexodon* Hubricht, 1966	Helicodiscidae	TN.
2	Marbled disc	*Discus marmorensis* H.B. Baker, 1932	Discidae	ID.
1	Santa Barbara shelled slug (=Slug snail)	*Binneya notabilis* Cooper, 1863	Arionidae	CA.
2	Blind glyph	*Glyphyalinia pecki* Hubricht, 1966	Zonitidae	AL.
2	Maryland glyph	*Glyphyalinia raderi* (Dall, 1898)	Zonitidae	KY,MD,VA,WV.
3C	Mirey Ridge supercoil	*Paravitrea clappi* (Pilsbry, 1898)	Zonitidae	NC,TN.
2	Sidelong supercoil	*Paravitrea ceres* Hubricht, 1978	Zonitidae	WV.
2	Mt. Matafao different snail	*Diastole matafaoi* H.B. Baker, 1938	Helicarionidae	American Samoa.
2	Tight coin (=Yate's snail)	*Ammonitella yatesi* Cooper, 1868	Ammonitellidae	CA.
2	Franklin Mountain wood snail	*Ashmunella pasonis* (Drake, 1951)	Polygyridae	TX.
2	Mission Creek oregonian	*Cryptonastix magnidentata (=Tridopsis mullani m.)* (Pilsbry, 1940)	Polygyridae	ID.
2	Palmetto pillsnail	*Euchemotrema cheatumi (=Stenotrema leai cheatumi)* (Pullington, 1974)	Polygyridae	TX.
2	Carinate pillsnail	*Euchemotrema (=Stenotrema) hubrichti* (Pilsbry, 1940)	Polygyridae	IL.
3C	Ocoee covert (=Archer's toothed land snail)	*Mesodon archeri* Pilsbry, 1940	Polygyridae	TN.
2	Calico Rock oval (=Clench's middle-toothed land snail)	*Mesodon clenchi* (Rehder, 1932)	Polygyridae	AR.
2	(Snail, no common name)	*Mesodon clausus trossulus* Hubricht, 1966	Polygyridae	AL.
3C	Big-tooth covert (=Jones' middle-toothed land snail)	*Mesodon jonesianus* (Archer, 1938)	Polygyridae	NC,TN.
2	Horseshoe liptooth	*Polygyra hippocrepis* (Pheiffer, 1848)	Polygyridae	TX.
2	White liptooth (=strange many-whorled land snail)	*Polygyra peregrina* Rehder, 1932	Polygyridae	AR.
1	Rich Mt. slitmouth (=Pilsbry's narrow-apertured land snail)	*Stenotrema pilsbryi* (Ferris, 1900)	Polygyridae	AR,OK.
2	Arkansas wedge (=western three-toothed land snail)	*Tridopsis occidentalis* (Pilsbry & Ferris, 1907)	Polygyridae	AR.
1	Karok Indian snail (=Karok hesperian)	*Vespericola karokorum* Talmage, 1962	Polygyridae	CA.
2	Idaho banded mountainsnail	*Oreohelix idahoensis idahoensis* Newcomb, 1866	Oreohelicidae	ID.
2	Boulder pile mountainsnail	*Oreohelix jugalis (=Oreohelox jugalis jugalis)* (Hemphill, 1890)	Oreohelicidae	ID.
2	Coalville mountainsnail	*Oreohelix peripherica weberiana* (Pilsbry, 1939)	Oreohelicidae	UT.
2	Carinated striate banded mountainsnail	*Oreohelix strigosa goniogyra* Pilsbry, 1933	Oreohelicidae	ID.
2	Whorled (=vortex banded) mountainsnail	*Oreohelix vortex (=Oreohelix jugalis vortex)* (Berry, 1932)	Oreohelicidae	ID.
2	Lava rock (=Walton's banded) mountainsnail	*Oreohelix waltoni* (Soles, 1975)	Oreohelicidae	ID.
2	White desertsnail	*Eremarionta (=Micrarionta) immaculata* (Willet, 1937)	Helminthoglyptidae	CA.
2	Thousand Palms desertsnail	*Eremarionta (=Micrarionta) millepalmarum* (Berry, 1930)	Helminthoglyptidae	CA.
2	Morongo (=Colorado) desertsnail	*Eremarionta (=Micrarionta) morogoana* (Berry, 1929)	Helminthoglyptidae	CA.
2	Catalina mountain snail	*Radiocentrum (=Oreohelix) avalonensis* (Hemphill in Pilsbry, 1905	Oreohelicidae	CA.

Note: Species in categories 1 and 2 are candidates. Species in category 3 are not (see text for explanation of categories).

CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Merced Canyon shoulderband (=Allyn Smith's banded snail)	*Helminthoglypta allynsmithi* (Pilsbry, 1939)	Helminthoglyptidae	CA.
3B	Cape Mendocino snail	*Helminthoglypta arrosa mattolensis* (A.G. Smith, 1938)	Helminthoglyptidae	CA.
3B	Dented peninsula snail	*Helminthoglypta arrosa mewoka* (Bartsch, 1909)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Helminthoglypta arrosa ponoensis* (A. G. Smith, 1938)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Helminthoglypta arrosa williamsi* (A. G. Smith, 1938)	Helminthoglyptidae	CA.
2	Kern shoulderband	*Helminthoglypta callistoderma* (Pilsbry & Ferris, 1918)	Helminthoglyptidae	CA.
2	Victorville shoulderband	*Helminthoglypta mohaveena* (Berry, 1927)	Helminthoglyptidae	CA.
2	Nicklin's peninsula snail	*Helminthoglypta nickliniana awania* (Bartsch, 1919)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Helminthoglypta nickliniana bridgesi* (Newcomb, 1861)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Helminthoglypta sequoicola consors* (Berry, 1938)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Helminthoglypta traski coelata* (Bartsch, 1916)	Helminthoglyptidae	CA.
1	Banded dune snail (=Morro shoulderband)	*Helminthoglypta walkeriana* (Hemphill, 1911)	Helminthoglyptidae	CA.
1	Santa Barbara islandsnail (=concentrated snail)	*Micrarionta facta* (Newcomb, 1864)	Helminthoglyptidae	CA.
2	San Nicholas islandsnail (=fraternal snail)	*Micrarionta feralis* (Hemphill, 1901)	Helminthoglyptidae	CA.
2	San Clemente islandsnail (=Gabb's snail)	*Micrarionta gabbi* (Newcomb, 1864)	Helminthoglyptidae	CA.
3B	Cathedral snail	*Micrarionta indioensis cathedralis* (Willet, 1935)	Helminthoglyptidae	CA.
3C	Horseshoe snail	*Micrarionta intercisa* (W. G. Binney, 1857)	Helminthoglyptidae	CA.
2	Pricklypear islandsnail (=prickly pear snail)	*Micrarionta opuntia* Roth, 1975	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Micrarionta rowelli bakerensis* (Pilsbry & Lowe, 1934)	Helminthoglyptidae	CA.
2	California McCoy snail	*Micrarionta rowelli mccoiana* (Willet, 1935)	Helminthoglyptidae	CA.
3C	Bicolored cactussnail (=Tryon's snail)	*Xerarionta (=Micrarionta) tryoni* (Newcomb, 1864)	Helminthoglyptidae	CA.
2	Keeled sideband	*Monadenia circumcarinata* (Stearns, 1879)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Monadenia fidelis minor* (W. G. Binney, 1885)	Helminthoglyptidae	OR.
2	Rocky coast snail	*Monadenia fidelis pronotis* (Berry, 1931)	Helminthoglyptidae	CA.
2	Indian Yosemite snail	*Monadenia hillebrandi yosemitensis* (Lowe, 1916)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Monadenia mormonum buttoni* (Pilsbry, 1900)	Helminthoglyptidae	CA.
2	(Snail, no common name)	*Monadenia mormonum hirsuta* (Pilsbry, 1927)	Helminthoglyptidae	CA.
2	Shasta sideband	*Monadenia troglodytes* (Hanna & Smith, 1933)	Helminthoglyptidae	CA.
2	Trinity bristlesnail (=California northern river snail)	*Monadenia setosa* (Talmadge, 1952)	Helminthoglyptidae	CA.
2	San Xavier talussnail	*Sonorella eremita* (Pilsbry & Ferris, 1915)	Helminthoglyptidae	AZ.
2	Franklin Mountain talussnail	*Sonorella metcalfi* (Miller, 1976)	Helminthoglyptidae	TX.
3C	Wreathed cactussnail (=Wreathed island snail)	*Xerarionta (=Micrarionta) redimita* (W. G. Binney, 1858)	Helminthoglyptidae	CA.
	CLAMS & MUSSELS (Mollusks, Class Bivalvia)			
2	Spectacle case (pearly mussel)	*Cumberlandia monodonta* (Say, 1929)	Margaritiferidae	AL,AR,IA,IN,IL,KY,MO,NE?,OH,TN,VA,WI.
2	Alabama pearlshell	*Margaritifera marrianae* Johnson, 1983	Margaritiferidae	AL.
2	Sangre de Cristo peaclam	*Pisidium sanguinichristi* Taylor, 1987	Sphaeriidae	NM.
2	Peaclam (No common name)	*Pisidium ultramontanum* Prime, 1865	Sphaeriidae	CA,OR.
2	Altamaha arc-mussel	*Alasmidonta arcula* (Lea, 1838)	Unionidae	GA.
2	Cumberland elktoe (mussel)	*Alasmidonta atropurpurea* (Rafinesque, 1831)	Unionidae	KY,TN.
1	Dwarf wedge mussel	*Alasmidonta heterodon* (Lea, 1829)	Unionidae	CT,MA,MD,NC,NH,NJ,NY?,PA,VA,VT, Canada.
3A	Coosa elktoe (mussel)	*Alasmidonta maccordi* Athearn, 1964	Unionidae	AL.
2	Appalachian elktoe (mussel)	*Alasmidonta raveneliana* (Lea, 1834)	Unionidae	NC.
3A	Carolina elktoe (mussel)	*Alasmidonta robusta* Clarke, 1981	Unionidae	NC.
2	Florida arc-mussel	*Alasmidonta wrightiana* (Walker, 1901)	Unionidae	FL.
2	Fat three-ridge (mussel)	*Amblema neislerii* (I.Lea, 1858)	Unionidae	FL,GA.
1	Ouachita Rock pocketbook (=Wheeler's pearly mussel)	*Arkansia wheeleri* Ortmann & Walker, 1912	Unionidae	AR,OK.
2	Western fanshell (=western fan-shell pearly mussel)	*Cyprogenia aberti* (Conrad, 1850)	Unionidae	AR,KS,MO,OK.
2	Fanshell (mussel)	*Cyprogenia stegaria (=C. irrorata)* (Rafinesque, 1820)	Unionidae	AL,IL,IN,KY,OH,PA,TN,VA,WV.
2	Salina mucket (mussel)	*Disconaias salinasensis* (Simpson, 1908)	Unionidae	TX, Mexico.
2	Cape Fear spike (mussel)	*Elliptio marsupiobesa* Fuller, 1972	Unionidae	NC.
2	Winged spike (=recovery pearly mussel)	*Elliptio nigella* (Lea, 1852)	Unionidae	AL,GA.
2	Altamaha lance (mussel)	*Elliptio shepardiana* (I.Lea, 1834)	Unionidae	GA.
2	Altamaha spinymussel (=Georgia spiny mussel)	*Elliptio spinosa* (Lea, 1836)	Unionidae	GA.
2	Waccamaw spike (mussel)	*Elliptio waccamawensis* (Lea, 1863)	Unionidae	NC.
2	Waccamaw lance pearlymussel	*Elliptio* sp.	Unionidae	NC.
2	Purple bankclimber (mussel)	*Elliptoideus sloatianus* (I.Lea, 1840)	Unionidae	AL,GA,FL.
3A	Sugarspoon (=arc-form pearly mussel)	*Epioblasma arcaeformis* (Lea, 1831)	Unionidae	AL*,TN*.
3A	Angled riffleshell	*Epioblasma biemarginata* (Lea, 1857)	Unionidae	AL*,TN*.
2	Cumberlandian combshell	*Epioblasma brevidens* (Lea, 1831)	Unionidae	AL,KY,TN VA
2	Oyster mussel	*Epioblasma capsaeformis* (Lea, 1834)	Unionidae	AL,KY,TN,VA.
3A	Leafshell (=arcuate pearly mussel)	*Epioblasma flexuosa* (Rafinesque, 1820)	Unionidae	AL*,TN*.
3A	Acornshell (=acorn pearly mussel)	*Epioblasma haysiana* (Lea, 1834)	Unionidae	AL*,TN*,VA*
3B	Lefevre's pearly mussel	*Epioblasma lefevrei* (Utterback, 1915)	Unionidae	AR*,MO*.
3A	Narrow catspaw (=Stones pearly mussel)	*Epioblasma lenior* (Lea, 1843)	Unionidae	AL*,TN*.
3A	Forkshell (Lewis' pearly mussel)	*Epioblasma lewisi* (Walker, 1910)	Unionidae	AL*,TN*,KY*.
2	Upland combshell (mussel)	*Epioblasma metastriata* (Conrad, 1840)	Unionidae	AL,GA.
2	Purple catspaw (mussel)	*Epioblasma obliquata obliquata (=E. sulcata sulcata)* (Rafinesque, 1820)	Unionidae	AL,IL,IN,KY,OH,TN
2	Southern acornshell (mussel)	*Epioblasma othcaloogensis* (I.Lea, 1857)	Unionidae	GA.
3A	Round combshell (=fine-rayed pearly mussel)	*Epioblasma personata* (Say, 1829)	Unionidae	AL*,TN*
3A	Tennessee riffleshell (=nearby pearly mussel)	*Epioblasma propinqua* (Lea, 1857)	Unionidae	AL*,TN*.
3A	Cumberland leafshell (=Steward's pearly mussel)	*Epioblasma stewardsoni* (Lea, 1852)	Unionidae	AL*,TN*.
2	Northern riffleshell (mussel)	*Epioblasma torulosa rangiana* (I.Lea, 1839)	Unionidae	IL,IN,KY,MI,OH,PA,WV, Canada.
2	Narrow pigtoe (mussel)	*Fusconia escambia* (Clench and Turner, 1956)	Unionidae	AL,FL.
2	Cracking pearlymussel	*Hemistena lata* (Rafinesque, 1820)	Unionidae	AL,IL,IN,KY,TN,VA.
2	Fine-lined pocketbook (mussel)	*Lampsilis altilis* (Conrad, 1834)	Unionidae	AL,GA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Southern sandshell (mussel)	*Lampsilis australis* (Simpson, 1900)	Unionidae	AL,FL.
2	Lined pocketbook (mussel)	*Lampsilis binominata* (Simpson, 1900)	Unionidae	AL,GA.
2	Orange-nacre mucket (mussel)	*Lampsilis perovalis* (Conrad, 1834)	Unionidae	AL,GA,MS.
2	Arkansas fat mucket (mussel)	*Lampsilis powelli*	Unionidae	AR.
2	Neosho mucket (=Neosho pearly mussel)	*Lampsilis rafinesqueana* Frierson, 1927	Unionidae	AR,KS,MO,OK.
2	Shiny-rayed pocketbook (mussel)	*Lampsilsis subangulata* (I.Lea, 1840)	Unionidae	AL,FL,GA.
2	Carolina heelsplitter (mussel)	*Lasmigonia decorata* (Lea,1852))	Unionidae	NC,SC.
2	Tennessee heelsplitter (mussel)	*Lasmigona holstonia* (Lea, 1838)	Unionidae	AL,GA,IL,IN,KY,TN,VA.
2	Scaleshell (mussel)	*Leptodea leptodon* (Rafinesque, 1820)	Unionidae	AR,IA,IL,IN,KY,MO,OH,OK.
2	Slabside pearlymussel	*Lexingtoni dolabelloides* (Lea, 1840)	Unionidae	AL,TN,VA.
2	Ring pink (Golf stick pearly mussel)	*Obovaria retusa* (Lamarck, 1819)	Unionidae	AL,IL,IN,KY,OH,PA,TN,WV
2	Round ebonyshell (mussel)	*Obovaria rotulata* (Wright, 1899)	Unionidae	AL,FL.
2	Clubshell (mussel)	*Pleurobema clava* (Lamarck, 1819)	Unionidae	AL,IL,IN,KY,MI,OH,PA,TN,WV.
2	Tennessee clubshell (mussel)	*Pleurobema oviforme* (Conrad, 1834)	Unionidae	KY,TN,VA.
2	Oval pigtoe (mussel)	*Pleurobema pyriforme* (I.Lea, 1857)	Unionidae	AL,FL,GA.
2	Warrior pigtoe (mussel)	*Pleuroblema rubellum* (Conrad, 1834)	Unionidae	AL.
3P	Pink pigtoe (mussel)	*Pleurobema rubrum* (Rafinesque, 1820)	Unionidae	AL,KY,TN.
2	True pigtoe (mussel)	*Pleurobema vernum* (I.Lea, 1860)	Unionidae	AL.
2	Texas hornshell (mussel)	*Popenaias popei* (I.Lea, 1857)	Unionidae	NM,TX, Mexico.
2	Texas heelsplitter (mussel)	*Potamilus amphichaenus* (Frierson, 1898)	Unionidae	LA,TX.
2	Alabama heelsplitter (mussel)	*Potamilus inflatus* (Lea, 1831)	Unionidae	AL,LA,MS.
2	Southern kidneyshell (mussell)	*Ptychobranchus jonesi* (van der Schalie, 1934)	Unionidae	AL,FL.
2	Rough rabbitsfoot (mussel)	*Quadrula cylindrica strigillata* (B.H.Wright, 1898)	Unionidae	KY,TN,VA.
3C	Winged mapleleaf (=rough maple leaf pearly mussel)	*Quadrula fragosa* (Conrad, 1835)	Unionidae	IN,IL,KS,KY,MO,OH,OK,WI.
2	False spike (mussel)	*Quincuncina mitchelli* (Simpson, 1896)	Unionidae	TX.
2	Salamander mussel	*Simpsonaias ambigua* (Say, 1825)	Unionidae	AR,IA,IL,IN,KY,MI,MO,NY,OH,TN,PA,WI,WV, Canada.
2	Purple lilliput (mussel)	*Toxolasma lividus* (Rafinesque,1831)	Unionidae	IL,IN,KY,MI,MO,OH,TN.
2	Savannah lilliput (mussel)	*Toxolasma pullus* (Conrad, 1838)	Unionidae	GA,NC,SC.
2	Mexican fawnsfoot (mussel)	*Truncilla cognata* (I,Lea, 1860)	Unionidae	TX, Mexico.
2	Choctaw bean (=Choctaw pearly mussel)	*Villosa choctaensis* Athearn, 1964	Unionidae	AL,FL.
2	Rayed bean (mussel)	*Villosa fabalis* (Lea, 1831)	Unionidae	AL,IL,IN,KY,MI,OH,TN,PA,VA,WV, Canada
2	Kentucky creekshell (=Ortman's pearly mussel)	*Villosa ortmanni* (Walker, 1925)	Unionidae	KY.
2	Purple bean (=Fine-rayed purple pearly mussel)	*Villosa perpurpurea* (Lea,1861)	Unionidae	TN,VA.

federal register

Friday
January 6, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Access to Secure Areas of Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 25568; Amdt. No. 107-4]

RIN 2120-AC69

Access to Secured Areas of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a requirement for certain airport operators to submit to the Director of Civil Aviation Security, for approval and inclusion in their approved security programs, amendments to ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and, also, to ensure that such access is denied immediately to individuals whose authority to have access changes. The rule provides for the installation and use of a system, method, or procedure that meets certain performance standards, or the use of an approved alternative system, method, or procedure for controlling access to secured areas of airports. This rule is needed to improve control of the locations that provide access to secured areas of airports. It is intended to enhance airport security by precluding access to these areas by unauthorized persons.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3370.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration's (FAA) Civil Aviation Security Program was initiated in 1973. Part 107 of the Federal Aviation Regulations was promulgated to provide a secure environment in which air carriers can operate. Airport operators are required by Part 107 to have an FAA-approved airport security program. The approved security program must describe the functions and procedures to control access to certain areas of the airport and to control movement of persons and vehicles within those areas. The Personnel Identification Procedures contained in airport security programs provide a means of control once an individual has gained access to a restricted area. The FAA is concerned that these procedures could allow an individual using forged, stolen, or noncurrent identification to compromise the secured areas. The FAA is also concerned that former employees could use their familiarity with airline and airport procedures to succeed in entering a secured area and possibly commit a criminal act on board an aircraft.

The December 7, 1987, tragedy involving Pacific Southwest Airlines (PSA) Flight 1771, in which 38 passengers and 5 crewmembers were killed after departing Los Angeles International Airport, highlighted FAA's interest in improving the control of access to secured areas of an airport. An airport area where access to aircraft and airport facilities is possible should be accessible only to an individual who is authorized to be in that area. These areas should be controlled carefully to prevent tampering with aircraft and airport facilities and to preclude tragic consequences.

The FAA accelerated its efforts to head off the type of situation potentially reflected by the crash of PSA Flight 1771 and to improve the level of security generally. This acceleration resulted in the promulgation of an emergency final rule amending the preboarding screening procedures contained in Parts 108 and 129 of the Federal Aviation Regulations (52 FR 48508; December 22, 1987). To complement the procedures required by that emergency regulation and to expand the performance standards of security systems at airports, on March 11, 1988, the FAA issued Notice of Proposed Rulemaking (Notice) No. 88-6 (53 FR 9094; March 18, 1988). That notice proposed that airport operators, whose airports met certain criteria, be required to submit to the Administrator, for approval and inclusion in their approved security programs, amendments to their programs that ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and also ensure that such access is denied immediately to individuals whose authority to have access changes. It further proposed that the program provide for a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. To provide this increased control of locations on the airport, the FAA proposed in Notice No. 88-6 the installation of a computer-controlled card access system. The notice also proposed that airport operators be allowed to install alternative systems which, in the Administrator's judgment, would have the same capabilities as the computer-card system and would provide an equivalent level of security.

Additionally, Notice No. 88-6 specifically stated that the proposal would supplement, not replace, the existing photo identification system required by an airport operator's approved security program. The continuous display of the individual identification in secured areas is necessary so that unauthorized individuals can be challenged in accordance with § 107.13. However, the notice proposed that the airport operator be given the option of integrating the system proposed by Notice No. 88-6 with the photo identification system and issuing a single credential.

The anticipated capabilities of a computer-controlled card access system were discussed in Notice No. 88-6. In addition to being able to monitor each location where access to the secured area is permitted by means of a "card reader" linked to the control computer, the system would be designed to provide for unique coding for each card. The system would also be capable of performing other functions that can improve an airport's security profile including the ability to cause an alert when access is denied to a person who attempts to use an invalid card and to establish a log of the system's activity. The notice intentionally did not address the details regarding the actual locations of the card readers and the operational methods to be employed by the system since each individual airport would employ a system specific to its needs.

In Notice No. 88-6, the FAA proposed a 4-phase schedule for airport operators to submit to the Administrator amendments to their security programs. The phases were based on the total number of persons screened annually at an airport. (The preamble to the proposed rule incorrectly stated "number of passengers screened" annually.)

The notice proposed that, upon approval of the amendment by the Administrator, airport operators would fully implement their systems within 6 months from the date of approval. However, the Administrator could allow up to an additional 6 months for implementation of the system at certain locations on each airport. The intent was to ensure implementation at the most critical airport locations and to allow additional time for implementation at locations that provide access to more remote locations on the airport.

Discussion of Comments

As of May 31, 1988, the FAA received 122 written comments in response to Notice No. 88-6 from organizations representing the aviation industry, air carriers, individuals, manufacturers, and airports. The majority of the commenters object to the proposal either in part or in its entirety. They believe the proposal to be premature and lacking in its evaluation of complex issues. Numerous commenters support the intent of the proposed rule but express concern because it lacked specificity about the requirements and because they made incorrect assumptions about the scope of the requirements. The following discussion is intended to address the comments and explain the FAA's response to the concerns identified in the 122 comments received through May 31, 1988. The FAA has reviewed and considered late-filed comments to determine if any new issues were raised or any significant, new factual information was provided.

Six commenters request a 60-day extension of the May 2, 1988, closing date for comments on Notice No. 88-6 including requests from the American Association of Airport Executives (AAAE), the Airport Operators Council International (AOCI), and the Regional Airline Association (RAA). A letter was also received from the Air Transport Association (ATA) in support of the AAAE and AOCI requests. They comment that, considering the magnitude of the issue, more time is needed to allow for wider distribution and discussion, to prepare additional information concerning the costs associated with the proposed system, and to allow maximum comments and facilitate an open exchange of ideas. The FAA denied the requests for extension. However, the FAA continued to consider late-filed comments beyond July 2, the date on which the requested extension period would have expired.

Twelve commenters are recommending that Notice No. 88-6 be withdrawn to allow time for the FAA, airport operators and tenants, and other interested parties to explore the total security problem that might exist at airports. At least three commenters are requesting a public hearing which they believe will allow them to air their concerns and expose pertinent issues thereby providing the FAA and the aviation community with necessary information. Ten commenters specifically request the FAA to conduct a study of the technology that is available regarding automated access control systems to determine the most appropriate system to accomplish the objective of the proposals. Several commenters, including the ATA and AAAE, recommend that the FAA conduct a pilot program at several airports to evaluate more realistically the issues involved in this rulemaking.

While worthy of merit under less compelling circumstances, the implementation of any of these recommendations would result in the postponement of a security measure intended to promote the safety of air transportation and therefore must be balanced carefully against that goal. The information that would be provided to the FAA through a public hearing would duplicate, to a large extent, that already contained in Docket No. 25568. Through its experience at more than a dozen major airports and other facilities, the FAA has been made aware of most of the existing technology regarding computerized access control systems and is confident that technology is available to meet the requirements of this final rule. Additionally, the FAA historically has been reviewing and evaluating all aspects of an airport operator's security program to ensure that it is commensurate with the size, layout, location, and activity level of the particular airport. Consequently, the FAA fully expects to be involved early on regarding the scope and design of a system that meets the required performance standards or an approved alternative that will comply with the final rule. From its historical role, as well as its early participation in the process outlined in this final rule, the FAA believes that the requirements of this rulemaking are both realistic and supportable.

The FAA plans also to issue general guidelines to assist airport operators in their selection of a system, method, or procedure and preparation of an amendment. The guidelines also will assist FAA personnel in their review and approval of the amendment containing an airport operator's proposed strategy to install and implement a system, method, or procedure that meets the performance standards or an approved alternative. In summary, the FAA's input and involvement at the very early stage will address many of the commenters' concerns that might otherwise argue for delaying final action.

Funding was another concern identified by 46 commenters. Most of them indicate that the Airport Improvement Program (AIP) would be their only source of funding. Many airport managers make reference to the notice which states that the proposed system would be eligible for funding under AIP; however, their concern is that the amount of AIP funding available would not cover all costs. Commenters also express concern that other airport improvement projects would be impeded due to the diversion of AIP funds. Several of the commenters recommend that the FAA consider making other funds available if a final rule is issued. Lastly, the commenters state that the short implementation schedule proposed in the notice could make AIP funding impossible due to the amount of time needed to process such requests.

The majority of the airports covered by this rule are primary airports. These airports, particularly the larger ones, have historically funded much or most of their capital development without Federal financial aid. In addition, primary airports receive entitlement funds each year under the AIP. It is expected that these airport sponsors would use the AIP entitlements or their own resources to fund required security capital costs. To the extent that these resources are not adequate at smaller airports and depending on the availability of other funding sources within the AIP, the FAA would consider supporting the program with funding, as necessary. Since the final rule includes a revised implementation schedule, the FAA believes that normal funding within the AIP should be sufficient to aid airports, and a "set aside" fund is not necessary.

Fifty-eight commenters are concerned about the costs that would be involved to achieve compliance with the requirement being proposed. They believe the cost figures reflected in the notice to be underestimated. Several commenters, including the ATA, AAAE, and AOCI, provide details of estimated costs. Those organizations indicate that the FAA cost estimates are underestimated by as much as a factor of 10. For that reason, the commenters believe that the Regulatory Evaluation is not accurate. They also state that the regulation being proposed meets the criteria for a major regulation under Executive Order 12291 and, therefore, requires a Regulatory Impact Analysis.

In response to the concerns regarding the estimated costs of the proposal, the FAA reviewed further the data contained in its Regulatory Evaluation. The results of that review are reflected in the evaluation for the final rule. A summary of the Regulatory Evaluation is included in this preamble under the heading "Economic Summary."

The concerns identified by the commenters regarding the implementation of the proposal reflect the extremely tight timeframe proposed

in Notice No. 88–6. Twenty-nine commenters contend that the unrealistic schedule makes compliance impossible considering the time-consuming process involved for budgeting, designing, bidding, procuring, and installing a system. Several commenters are recommending 2 years in addition to the time proposed in Notice No. 88–6. One commenter recommends that the compliance time for this requirement be 3 years following the allocation of dedicated AIP funds.

The FAA agrees with the commenters regarding their concerns about the implementation schedule proposed in Notice No. 88–6. Accordingly, the final rule contains a revised implementation schedule. The revised schedule constitutes a significant change from the language proposed in Notice No. 88–6.

Thirteen commenters express concern for the effectiveness of a system that airport operators might be forced to implement if they are subject to the schedule proposed in the notice. If 269 airports were required to comply with the schedule as proposed in the notice, the overdemand for qualified vendors would require using inexperienced contractors and companies. The commenters are in favor of extending the time period for implementation since compliance with the proposed schedule could have a detrimental effect on the system quality and reliability, especially at medium- and small-sized airports.

The FAA considers these concerns to be valid, and as stated above, the schedule contained in the final rule is revised. Current data indicate that 270 airports would be required to comply with a final rule.

The performance standards associated with a computer-controlled card access system causes serious concerns for at least 14 of the commenters. Nine commenters believe the time-date requirement for controlling access to be impractical due to necessary adjustments in work schedules to meet demands. Their specific concern is for the impact it will have on day-to-day operations; e.g., reassigning staff personnel, using different gates for delayed flights, working overtime, and changing workshifts.

If a computer-controlled card system is selected by an airport operator to meet the requirements of the final rule, the FAA anticipates that the system would be designed to have unique coding for each card so that the computer can be reprogrammed in minutes to revise the access authorized by a specific card. Such details will be developed in the context of the amendment to an airport's approved security program and will take into account the need for operational flexibility. The FAA plans to issue general guidelines on system operation.

Many of the commenters express concern for terminology contained in the notice. "Secured area" is not defined in Part 107 or 108 of the FAR. Two commenters request a definition of "immediately" which is stated in the proposal to indicate when access should be denied to individuals whose authority changes. Other commenters express concern regarding the use of the word "airports" versus "airport operators" in the preamble to Notice No. 88–6. Twenty commenters are concerned about an apparent conflict that centers around the airport operator's responsibilities for security under Part 107 and those of air carriers subject to Part 108 who have entered into exclusive use agreements with airport operators. The commenters urge the FAA to clarify this issue before proceeding with a final rule. One commenter requests standardization by the FAA in its interpretation of a final rule.

The FAA intentionally did not define "secured area" in the notice, nor is it defined in the final rule. To do so could result in the compromise of airport operators' security programs. Use of the term "immediately" is intended to stress the urgency with which an airport operator should act to deny access to secured areas by unauthorized individuals. The preamble to Notice No. 88–6 used the phrase "in a matter of minutes." Although the FAA has not further defined this term in the final rule, the FAA believes that the time interval should be the reasonable minimum time necessary to adjust the database to deny access to an individual. Regarding the use of the word "airport," the FAA agrees that the preamble statement referenced by the commenters creates confusion. However, the proposed rule and the final rule clearly establish that the regulated entity is the airport operator. Finally, the FAA does not view the use of the term "airport operator" as being inappropriate notwithstanding that an airport operator may have entered into an exclusive use agreement with an air carrier. When entering into an exclusive use agreement, the air carrier must accept the controls and procedures levied upon it by the airport operator. In such a case, the airport operator may be required to establish additional controls or modify existing ones for selected areas of an airport to comply with this final rule.

The FAA agrees with the commenter who requests that the FAA standardize its interpretation of a final rule to prevent serious differences in its implementation. The FAA will accomplish the requested standardization through the issuance of guidance to the various FAA regions for dissemination to the civil aviation security inspectors.

A number of commenters express concern that individuals who ordinarily have access at several airports (such as crewmembers or officials of a multiairport jurisdiction) would need a card for each airport. At least five commenters recommend that a commonality exist among the systems to preclude possible confusion and inconvenience stemming from individual systems which deny access to the above individuals. The commenters, in essence, recommend that the FAA require access control systems that are compatible on a national basis.

The FAA does not agree at this time that imposing uniformity is warranted. First, it would require imposing a uniform type of system, e.g., a computer-controlled card system. Moreover, requiring each airport to have a system with nationwide capacity and compatibility (capable of storing hundreds of thousands of names) would drive system costs up and would benefit only a small segment of the individuals who are associated with the regulated entities. Moreover, since the final rule expands the opportunity to use an alternative system, method, or procedure in response to the comments, nationwide uniformity is not practicable. However, an effort is underway to study the feasibility of an access system with multiairport capabilities. The FAA anticipates that operational issues will be identified in the study.

Twenty commenters address the issue of alternative access control systems that provide an equivalent level of security. Many of these commenters, including operators of small airports, state that nonautomated systems should be permitted. They believe that the requirement for the alternative to have the same capabilities as a computer-controlled card system is too restrictive. Ten comments were received from people who are in the business of providing systems for access control. The intent of these commenters is to make the FAA aware of technologies that are available, and, more importantly, to recommend that a final rule not require one type of system while allowing others to be used by exception as proposed in Notice No. 88–6.

The FAA agrees that, in addition to the specific technology identified in Notice No. 88–6, others may be available

to meet the objectives of the proposal. The FAA also envisions that operators of the smaller airports may be able to meet the requirements of this final rule with minimal or no computer-assisted hardware installation. The final rule is revised accordingly.

The lack of specificity regarding the doors, gates, or other locations that would be involved in the implementation of the proposed system is of concern to 24 commenters. They contend that the number of access points to be controlled will significantly impact the cost of the system. They also express concern about the applicability of a rule to those points that give access to various suppliers who are making daily deliveries to tenants in a restricted area and to the current escort procedures that provide construction workers with daily or temporary access to restricted areas. Seven commenters believe the proposal to be in conflict with fire codes.

For the same reason that "secured area" was not defined, the FAA was not specific regarding doors, gates, and other locations to be controlled. To do so would compromise an airport operator's security program. For that reason, the FAA specifically requested that airport operators not discuss in their comments specific details of current or proposed security arrangements. The FAA-planned guidance for the various FAA regions will assist the FAA personnel and airport operators in the identification of those access points that should be subject to control by the system, method, or procedure required by this final rule. The FAA does not envision that every door or other access point will need the enhanced access controls. In response to the concern regarding suppliers, the intended effect of the requirement proposed by the notice will not allow the FAA to consider the inconvenience of such a requirement to any one group. Escort procedures are associated with an airport's identification system, and Notice No. 88-6 stated that the proposal would supplement, not replace, an existing identification system required by an airport operator's security program. Escorting of persons will continue to be permitted under the rule.

Twenty-nine commenters state that the complicated and expensive automated security measures proposed by the notice are not necessary at small airports since small airports experience different types of problems than do large airports. Nineteen commenters specifically state that the current procedures are adequate and that the level of security anticipated by the FAA through the final rule can only be obtained via greater discipline of personnel and more training on security issues. Six commenters recommend an evaluation of different airports to determine the scope of security needs and to give consideration to the complexity of operations before effecting a rule to require all airports to have a complex and expensive computer-controlled system.

The FAA agrees with the commenters and recognizes that security varies from airport to airport. The final rule is revised to permit FAA approval of an alternative system, method, or procedure that provides an appropriate level of security commensurate with an airport's needs.

At least three commenters express concern that Notice No. 88-6 does not address the impact on fixed based operators (FBO) and request clarification of this issue. Eleven commenters express the same concern for general aviation (GA) operations.

Upon adoption of a final rule, the airport operator would be the regulated party. As tenants of the airport, FBO's and GA operations would be subject to the control procedures identified by the airport operator.

Seventeen commenters state that the required system will not prevent a person from violating security measures if that person has such a desire. At least three commenters state that the required system will not prevent the PSA Flight 1771 type of tragedy.

The FAA believes that the emergency final rule amending the preboarding screening procedures complemented by the requirements of this rule to require airport operators to implement a positive access control system will substantially increase the overall level of security and will minimize the likelihood of a PSA Flight 1771 type of situation.

Finally, 11 persons comment that the proposed regulation will, at the very least, enhance security to a minimal degree. They contend that in some cases security will deteriorate if all issues involved at any one airport are not considered in the system design and implementation.

The FAA believes that the final rule will enhance airport security beyond a minimal degree since its intent is to preclude access to secured areas by unauthorized persons. Since the commenters did not identify the specific issues to be considered to prevent a deterioration of security, the FAA cannot adequately respond to that concern.

Discussion of the Rule

After considering the comments, the FAA is amending Part 107 to add a new § 107.14 to require improved access control to secured areas of certain airports. The final rule revises the proposed rule in several significant respects as a result of the comments received.

Section 107.14(a). Paragraph (a) of § 107.14 is revised in three ways from the proposal. First, the amendment to an airport operator's approved security program is to be submitted to the Director of Civil Aviation Security rather than the Administrator. The substitution of the Director of Civil Aviation Security for the Administrator has been made throughout § 107.14. Second, the last two sentences of proposed paragraph (a), dealing with the timeframe for implementation of a required system, have been deleted. The implementation schedule is found in paragraph (c) of § 107.14 of the final rule and is discussed below. Third, the requirement of paragraph (a) that certain airport operators submit, for approval and inclusion in their approved security programs, amendments that provide for the installation and use of a computer-controlled card system for access to secured areas of the airport, has been modified. Paragraph (a) now requires the installation and use of a system, method, or procedure that meets specified performance standards to control access to secured areas of the airport. This change allows the installation and use of systems, methods, or procedures other than computer-controlled card systems which may be currently available or that become available in the future as technology evolves and that meet the performance standards.

Section 107.14(b). Paragraph (b) of § 107.14 addresses the approval of alternative systems, methods, or procedures. The final rule reflects major changes from the proposed rule as a result of comments received. Approval of an alternative under the final rule is not tied to having the same capabilities as the system, method, or procedure meeting the performance standards of paragraph (a). This permits approval of other than automated systems. However, the critical element for approval of any alternative is the same in the final rule as it was in the proposed rule; the alternative must provide an overall level of security equal to that which would be provided by the type of system, method, or procedure described in paragraph (a).

Section 107.14(c). Paragraph (c) of the proposed rule sets forth the schedule for airport operators to submit the amendments to their approved security programs required by paragraph (a) or (b). The final rule retains the 4-phase approach and the timeframes for airports subject to each phase to submit their amendments. Airport operators may submit their amendments prior to the date required by this final rule. For example, since some airport operators will be able to meet the requirements of the rule without installing a system, method, or procedure that meets the performance standards of paragraph (a), and will be able to meet the intent of the rule on a much faster timeframe, they are encouraged to submit their plans before the dates required by the final rule.

Operators of Phase I airports, where 25 million or more persons are screened annually or as designated by the Director of Civil Aviation Security, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase II airports, where more than 2 million persons are screened annually, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase III airports, where 500,000 to 2 million persons are screened annually, must submit amendments by 12 months after the effective date of the final rule. Operators of Phase IV airports, where less than 500,000 persons are screened annually, must submit amendments by 12 months after the effective date of the final rule.

Paragraph (c) of the final rule also includes an implementation schedule. The implementation timeframe, which was in paragraph (a) of the proposed rule, is substantially revised in the final rule. The proposed rule provided that "the system must be in use within 6 months" after approval of an airport operator's amendment to its approved security program. The proposed rule also provided for an additional 6 months at certain locations on an airport. The short timeframe of the proposed rule applied to airports in all four phases.

The final rule is different in several major respects. First, the implementation schedule is now linked to the phases. The final rule provides that the system, method, or procedure must be fully operational within 18 months after approval of an airport operator's amendment to its approved security program only at Phase I airports. Operators of Phase II airports have 24 months after approval of the amendments to their approved security programs. Operators of Phase III and IV airports have 30 months. The approved amendment for each airport shall specify how the system, method, or procedure will be fully operational within the appropriate timeframe.

Finally, paragraph (c) has added language to address the situation where an existing airport becomes subject to the requirements of § 107.14 after the effective date of the final rule. The timeframes for such an airport operator to submit an amendment to its approved security program and to specify that the system, method, or procedure must be fully operational depend on the phase that is applicable to the airport.

Section 107.14(d). A new paragraph (d) is included in the final rule to address the situation of brand new airports commencing operations after December 31, 1990. It is FAA's view that new airports should meet the requirements of section 107.14 when they commence operations since the improved access control requirements of the rule can be included in the design for these new airports and at a lower cost than a subsequent retrofit.

Economic Summary

The following is a summary of the final cost impact and benefit assessment of this rule amending Part 107 of the Federal Aviation Regulations to provide enhanced control of access to secured areas at certain U.S. airports. A full regulatory evaluation has been inserted into the public docket for this rulemaking.

For purposes only of this evaluation, the projected economic impact of the rule is based on the costs of installing and operating a computer-controlled card access system. Other access control systems, methods, or procedures may be permitted as a means of compliance with this rule subject to the approval of the Director of Civil Aviation Security.

Fifty-eight of the 122 written comments received as of May 31, 1988, in response to Notice No. 88-6 published in the **Federal Register** on March 18, 1988, pertain to the economic impact of the proposal. These comments were submitted by industry associations, individual airport authorities, air services, and producers of airport security equipment. The vast majority of these comments generally state that the FAA had underestimated the total costs required for compliance with the proposed rule.

Many of these comments are premised on two basic assumptions: (1) That the FAA underestimated the cost per access point, and (2) that the FAA underestimated the number of access points requiring enhanced control at airports.

The FAA has carefully reviewed its own cost estimates in light of comments received and does not agree that it underestimated the cost per access point. The FAA's estimates of design, testing, hardware, installation, maintenance, software update, and security card replacement costs were based on price quotes of manufacturers of computer card access systems. Cost per access area will differ for airports of different sizes, due to the large number of variables in required equipment, labor and maintenance and structural alterations associated with retrofit of existing systems. Thus, it is misleading to estimate total costs of the proposed rulemaking based on the cost per access area of one or two airports, as was done by some commenters.

Regarding the number of access points, the FAA believes that several commenters misunderstand the scope of the proposed rulemaking and have therefore overestimated the number of access points that the rule would require to have enhanced access controls (system, method, or procedure). In determining the number of doors that would be affected, the FAA did not envision that every door in a terminal area would need to be so controlled. Rather, the design of many airport buildings permits a "funneling through" effect which would minimize the number of doors requiring such enhanced control. In general, funnelling persons through a single point with enhanced access controls to an area would eliminate the need to have such controls at subsequent doors.

Therefore, for its economic analysis of the final rule, the FAA has not revised its estimates of the average number of access points that would need to be controlled in the four categories of airports. The number of access points for airports of each phase remains as follows in the economic analysis of the final rule:

Phase I: 128 access points
Phase II: 60 access points
Phase III: 25 access points
Phase IV: 10 access points

Several airport operators comment that the cost of the required security measure described in Notice No. 88-6 is excessive and would impose a heavy financial burden on them. The FAA recognizess these concerns and has therefore emphasized in the final rule that an airport operator may submit an amendment to its security program for approval by the Director of Civil Aviation Security, which does not

necessarily require a computer card or automated system. The Director of Civil Aviation Security may approve such an alternative system, method, or procedure if, in the Director's judgment, it provides an overall level of security equal to that of a system, method or procedure meeting the performance standards outlined in the final rule. These performance standards, although stringent, do not specifically require use of a computerized or automated system.

In addition, the implementation schedule for affected airports has been revised in the final rule to allow more time for compliance, particularly for medium- and small-sized airports. One positive effect of this change may be to spread up-front costs for installation over a longer period of time, easing the burden on many airport operators.

Costs

This analysis of the costs of compliance with the final rule is premised on the assumption that all 270 airports will install computer-controlled card access systems. In actuality, many airport operators, particularly of medium- and small-sized airports in Phases III and IV, may install alternative access control systems, methods, or procedures, with the approval of the Director of Civil Aviation Security, that may prove to be less costly than the computer card systems. Therefore, the actual costs of this rule may be less than the estimated costs in this analysis.

Estimated costs of implementing controlled access systems at 270 airports in the United States, in accordance with the specifications and revised schedule of new § 107.14, are $169.9 million in 1987 dollars, and $119.1 million discounted present value (employing a 10 percent discount rate), for the 10-year evaluation period from 1989–1998. For Phase I airports, average hardware and installation costs are expected to be $1,465,600, with average annual recurring costs of approximately $126,600. For Phase II airports, average hardware and installation costs are expected to be $732,000, with annual recurring costs of approximately $88,730. For Phase III airports, average hardware and installation costs are expected to be $245,000, with annual recurring costs of approximately $42,969. For Phase IV airports, average hardware and installation costs are expected to be $56,000, with annual recurring costs of approximately $3,100. Table I shows the total of these costs by phase of airport and by year for the 270 airports affected by this rule.

The revised implementation schedules specified in this rule for airports of the four phases, permitting installation, maintenance and labor costs to commence later than indicated in the Initial Regulatory Evaluation, have the effect of slightly reducing the present value of total costs. Nonetheless, overall estimated costs of compliance have increased from estimates in the Initial Regulatory Evaluation, as a result of an increase in the number of airports in each phase. According to a recent review, there are 17 rather than 16 airports in Phase I, 54 rather than 48 airports in Phase II, 46 rather than 45 airports in Phase III, and 153 rather than 160 airports in Phase IV.

Benefits

The primary benefit of this rule will be the prevention of potential fatalities and injuries and the destruction of property resulting from a criminal act or an act of air piracy. The tragic loss on December 7, 1987, of 38 passengers and 5 crewmembers aboard PSA Flight 1771, serves as a basis for focusing on the type of catastrophic event that may be prevented by adopting new security regulations. It is important to recognize that the PSA Flight 1771 incident involved a smaller aircraft and passenger load than a typical Part 121 air carrier operation. If such a criminal act were perpetrated in a larger or more heavily loaded aircraft, the casualty loss would have been significantly higher.

The estimated $119.1 million cost (discounted present value) of this rule can be recovered fully if one incident, involving the loss of 170 lives and a wide-bodied jet transport of the type typically used in domestic operations, is prevented as a result of requiring improved security programs at U.S. airports during the 10 years following adoption of this rule. This determination is based upon a minimum value of $1.0 million per life saved, used in FAA regulatory evaluations, and an aircraft hull value of approximately $30.0 million, discounted from the middle of the 10-year evaluation period to account for the uncertainty of when such an incident may be prevented.

Regulatory Flexibility Determination

This amendment would affect 270 of the 427 airports subject to the security provisions of Part 107. The FAA's small entity size standards criterion define a small airport as one owned by a county, city, town or other jurisdiction with a population of 49,999 or less. Applying the FAA's size threshold criterion, 76 of the 427 airports are small. Since only 22 of the 270 airports that would be required to comply with this proposal are small, the requirement for the enhanced access controls will not affect a substantial number (at least one third) of the 76 small airports subject to Part 107. Therefore, this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

TABLE I.—COST OF COMPUTER-CONTROLLED CARD ACCESS SYSTEMS FOR YEARS 1989-1998

Year	Phase I	Phase II	Phase III	Phase IV	Total Costs
1989	[2] $9,444,067	$13,417,920			$22,861,987
1990	[2] 18,599,133	[2] 24,312,420	[2] 5,359,491		48,271,044
1991	[1] 1,989,000	[2] 14,430,420	[2] 5,646,991		22,066,411
1992	1,989,000	[1] 4,548,420	[2] 5,646,991	[2] 8,698,050	20,882,461
1993	1,989,000	4,548,420	[1] 1,890,324	[1] 359,550	8,787,294
1994	2,641,800	4,548,420	1,890,324	359,550	9,440,094
1995	1,989,000	5,520,420	1,890,324	359,550	9,759,294
1996	1,989,000	4,548,420	2,235,324	818,550	9,591,294
1997	1,989,000	4,548,420	1,890,324	359,550	8,787,294
1998	2,641,800	4,548,420	1,890,324	359,550	9,440,094
Total Cost (1987 dollars)	45,260,800	84,971,700	28,340,416	11,314,350	169,887,266
Total Cost (present value; 10% discount rate)	33,345,586	60,267,176	18,312,651	7,224,445	119,149,858

[1] Recurring annual costs include security access card replacement, computer maintenance, software update and support, and additional labor. Recurring costs also include card readers maintenance every 4th year.

[2] One-time installation costs include planning and procurement of computers, peripheral equipment, card readers, security access cards, engineering site survey and design, and Manager/Operator training.

Trade Impact Statement

This rule is expected to have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. This amendment affects only certain domestic airports subject to Part 107 of the FAR. Since there is virtually no foreign competition for the services provided by U.S. domestic airports, there is expected to be no impact on trade opportunities for either U.S. firms overseas or foreign firms in the United States.

Reporting and Recordkeeping

The requirements in the current regulations (Part 107) for an airport operator to submit an airport security program and amendments to the FAA for approval were approved by the Office of Management and Budget (OMB) under Control No. 2120–0075. Pursuant to this final rule, the FAA forwarded an amendment to Control No. 2120–0075 to OMB in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511). OMB approved the FAA's amendment of Control No. 2120–0075 on January 3, 1989.

Federalism Implications

The FAA believes that airport operators and sponsors will not be unduly burdened by the requirements of the final rule based on (1) the availability of AIP funding; (2) potential lower costs associated with alternative systems, methods, or procedures; and (3) the extended implementation schedule providing amortization of installations costs. On these bases, the FAA has determined that this regulation will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this rule 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 of 1980. Because of the substantial public interest resulting from Notice No. 88–6, this rule is considered significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 107

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Aviation security, Secured areas.

The Amendment

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is amended as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449; January 12, 1983).

2. By adding a new § 107.14 to read as follows:

§ 107.14 Access control system.

(a) Except as provided in paragraph (b) of this section, each operator of an airport regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 60 seats shall submit to the Director of Civil Aviation Security, for approval and inclusion in its approved security program, an amendment to provide for a system, method, or procedure which meets the requirements specified in this paragraph for controlling access to secured areas of the airport. The system, method, or procedure shall ensure that only those persons authorized to have access to secured areas by the airport operator's security program are able to obtain that access and shall specifically provide a means to ensure that such access is denied immediately at the access point or points to individuals whose authority to have access changes. The system, method, or procedure shall provide a means to differentiate between persons authorized to have access to only a particular portion of the secured areas and persons authorized to have access only to other portions or to the entire secured area. The system, method, or procedure shall be capable of limiting an individual's access by time and date.

(b) The Director of Civil Aviation Security will approve an amendment to an airport operator's security program that provides for the use of an alternative system, method, or procedure if, in the Director's judgment, the alternative would provide an overall level of security equal to that which would be provided by the system, method, or procedure described in paragraph (a) of this section.

(c) Each airport operator shall submit the amendment to its approved security program required by paragraph (a) or (b) of this section according to the following schedule:

(1) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where at least 25 million persons are screened annually or airports that have been designated by the Director of Civil Aviation Security. The amendment shall specify that the system, method, or procedure must be fully operational within 18 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(2) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 24 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(3) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where at least 500,000 but not more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(4) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where less than 500,000 persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(d) Notwithstanding paragraph (c) of this section, an airport operator of a

newly constructed airport commencing initial operation after December 31, 1990, as an airport subject to paragraph (a) of this section, shall include as part of its original airport security program to be submitted to the FAA for approval a fully operational system, method, or procedure in accordance with this section.

Issued in Washington, DC, on January 3, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89-279 Filed 1-4-89; 9:48 am]

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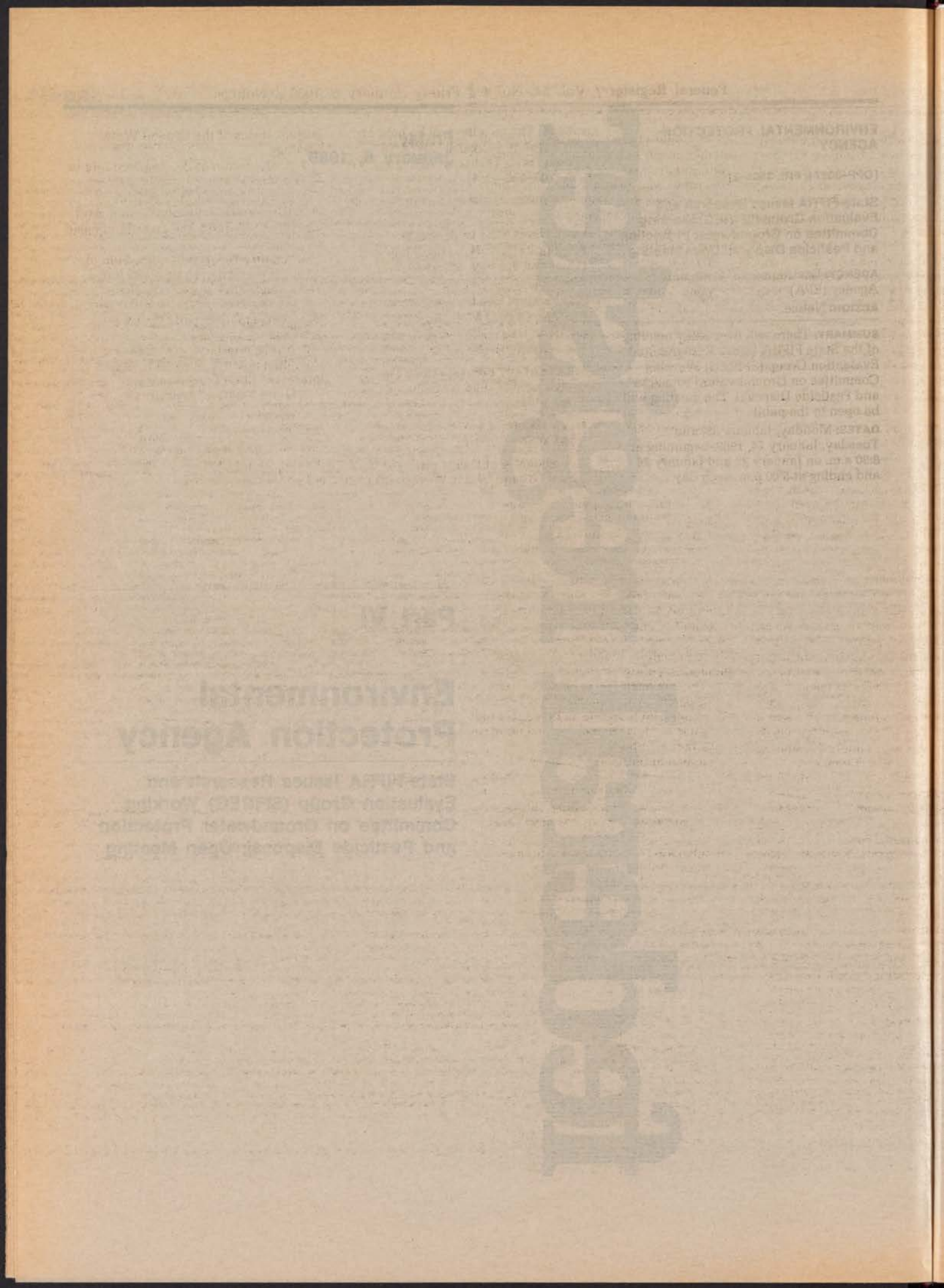
federal register

Friday
January 6, 1989

Part VI

Environmental Protection Agency

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal; Open Meeting



ENVIRONMENTAL PROTECTION AGENCY

[OPP-00271; FRL 3504-2]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal. The meeting will be open to the public.

DATES: Monday, January 23, and Tuesday, January 24, 1989, beginning at 8:30 a.m. on January 23 and January 24 and ending at 5:00 p.m. each day.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703–486–1234).

FOR FURTHER INFORMATION CONTACT: By mail,

John T. Tice, Office of Pesticide Programs (TS–787C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 712, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7410).

SUPPLEMENTARY INFORMATION: The tentative agenda thus far includes the following topics:

1. A status report on the National Ground Water Survey.

2. A summary of issues raised at the Regional Ground Water Workshops and current status of the Ground Water Strategy.

3. A discussion of the Regional role in the Ground Water Strategy for FY 90.

4. A discussion of the Pesticide Programs' needs for ground water data and what the states can provide to meet those needs.

5. A status report and discussion of disposal regulations being developed under the FIFRA 88 amendments.

6. A discussion of the field use of impervious loading pads for 2,4–D products.

7. A presentation by the Office of Compliance Monitoring on issues of interest to State Lead Agencies.

8. Other topics as appropriate.

Dated: January 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–398 Filed 1–5–89; 10:48 am]

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