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4-22-92

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Pages 14637-14790

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Federal Register

Briefing on How To Use the Federal Register
For information on the briefing in St. Louis, MO, see
announcement on the inside cover of this issue.



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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:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Federal Building,
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St. Louis, MO

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 451, and 540

Performance Awards; Time-off From Duty as an Incentive Award

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations implementing sections 201 and 207 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and the optional exclusion of temporary employees from performance appraisal to reflect comments on interim regulations published on May 3, 1991. These sections of FEPCA provide specific statutory authorization for cash awards based on performance ratings for employees in the General Schedule and Federal Wage System and a new provision for time off from duty as an incentive award. Public Law 101-510, November 5, 1990, amended 5 U.S.C. chapter 43 to authorize the optional exclusion of temporary employees from performance appraisal.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT:

For part 430: Barbara W. Colchao, (202) 606-2628 or (FTS) 266-2628; for part 451: Darlene Shields, (202) 606-2828 or (FTS) 266-2828.

SUPPLEMENTARY INFORMATION: On May 3, 1991, at 56 FR 20331, OPM Published interim regulations to implement the performance award and time off from duty as an incentive award provisions of FEPCA, Public Law 101-509, and the optional exclusion of temporary employees (Pub. L. 101-510) from the statutory performance appraisal provisions of 5 U.S.C. chapter 43, with a 60-day comment period.

During the comment period, which ended July 2, 1991, OPM received

comments from seven Federal agency headquarters and one union. The revised regulations reflect these comments.

Agencies are requested to update their performance management plans to reflect these policy changes and provide an informational copy to OPM to keep our files current. No formal approval will be required.

Following is an outline of the changes to the regulations, including the identification of each issue, a summary of comments, and a discussion of OPM's rationale for the changes being made. The issues are listed in sequential order as they appeared in the interim regulations.

1. Issue: Exclusion of temporary employees from performance appraisal (§§ 430.202 and 430.403).

Summary of Comments: Four agencies provided comments. Two agencies felt the requirement for a written agreement with the employee would be overly burdensome. One agency stated that employees who do not complete a minimum appraisal period cannot be rated anyway and agencies should have the discretion to rate other temporary employees (i.e., those with appointments of more than 90 or 120 days but less than 1 year). One agency pointed out that Public Law 101-510 provided for optional exclusion of temporary employees.

Discussion: OPM recognizes the optional nature of the provision to exempt certain temporary employees. Therefore, the regulations are being revised to clarify this.

Agencies now appraise all temporary employees who complete a minimum appraisal period and may continue to do so. If an agency chooses not to provide elements and standards and appraise such employees, then the statute requires that it must be with the employee's agreement to serve without a performance evaluation. In its interim regulation OPM required that this agreement be in writing to ensure that there would be no misunderstanding between the employee and the agency. In addition, Executive Order No. 12778 Civil Justice Reform has been issued recently detailing measures for formulating regulations in a way that minimizes the possibility of litigation. Consistent with that objective, OPM believes that obtaining a written agreement to serve without a performance evaluation, signed by the

employee, would be the most prudent method of avoiding disputes regarding whether or not the employee's agreement had been obtained.

Change: No change, except for a minor editorial correction.

2. Issue: Performance awards (§ 430.504).

Summary of Comments: One agency and one union commented on the requirement for higher level review of performance awards and their amount. The union wanted to exempt negotiated agreements from such requirements, and the agency wanted delegated authority to make the determination for itself.

Discussion: OPM recognizes the concerns of the union and agency but feels strongly that the award process, including the amount of any award granted, must be properly reviewed for compliance with internal agency justification criteria and budgetary limitations.

Change: No change.

3. Issue: Granting time-off awards (§ 451.305).

Summary of Comments: Two agencies requested clarification of the relationship between time-off awards and other types of incentive awards, including whether time-off awards could be granted in combination with other awards.

Discussion: OPM agrees that further clarification is needed and intends to provide it in the form of policy guidance to be published in the Federal Personnel Manual.

Change: No change.

Issue: Restriction on the amount of time off that may be granted (§ 451.305(a)).

Summary of Comments: Two agencies and one labor organization suggested removal of the time restriction on granting single time-off awards (up to 40 hours for a single contribution or, in the case of a part-time employee or an employee with an uncommon tour of duty, one-half the maximum amount of time that could be granted during the leave year).

Discussion: Authorizing up to 40 hours of time off for a single employee contribution provides sufficient flexibility to recognize a wide variety of employee achievements. Intended to be used primarily as an incentive award to encourage and recognize one-time, non-recurring employee accomplishments above or beyond normal job

requirements, this 40-hour time frame is considered appropriate.

Change: No change.

5. *Issue:* Review/approval of time-off awards (§ 451.305(c)).

Summary of Comments: Two agencies suggested that all time-off awards, including those of 1 workday or less, be reviewed and approved at a management level higher than the individual who recommended the award. One labor organization suggested that supervisors be authorized to grant up to 3 days without further review.

Discussion: The authority for agencies to authorize their supervisors to grant employees up to 1 workday without further review or approval is intended to facilitate timely recognition. Agencies, at their discretion, may decide to exercise greater control by requiring higher level review and approval of all time-off awards, including those of 1 workday or less. Time-off awards, regardless of the number of hours, must be supported by written documentation.

Change: No change.

6. *Issue:* Scheduling and use of time-off awards (§ 451.306).

Summary of Comments: Two agencies and one labor organization suggested that the deadline for scheduling and using time-off awards be extended beyond 120 days from the date the award is made. One of the two agencies and the labor organization recommended a 1-year deadline.

Discussion: OPM agrees that the 120-day time frame for scheduling and using time-off awards may be too short to accommodate both agency requirements and employee leave circumstances and interests.

Change: Section 451.306(a) has been revised to authorize agencies to establish the time frame for scheduling and using time-off awards with the provision that the maximum amount of time to use the time-off award may not exceed a year from the date granted.

7. *Issue:* Relationship between time-off awards and leave (§ 451.303).

Summary of Comments: Two agencies suggested that the relationship between time-off awards and various types of leave should be clarified and that the issue of "carry-over" of leave for employees who transfer to another agency should be addressed.

Discussion: OPM agrees that further clarification is needed and intends to provide it in the form of policy guidance to be published in the Federal Personnel Manual.

Change: No change.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because the changes will affect only Federal employees and agencies.

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5 CFR 430

Administrative practice and procedures, reporting requirements, Government employees.

5 CFR 451

Decorations, medals, and awards; Government employees.

5 CFR 540

Government employees, wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the interim rules under 5 CFR parts 430, 451, and 540 published May 5, 1991, at 56 FR 20331 are adopted as final with the following changes:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.202, paragraph (c) is revised to read as follows:

§ 430.202 Coverage.

* * * * *

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded: Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

* * * * *

3. In § 430.403, paragraph (c) is revised to read as follows:

§ 430.403 Coverage.

* * * * *

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded: Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

* * * * *

4. Section 430.504(c) is revised to read as follows:

§ 430.504 Performance award payment.

* * * * *

(c) For the purpose of computing the percentage of basic pay under paragraph (a) of this section, the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively.

PART 451—INCENTIVE AWARDS

5. The authority citation for part 451 is revised to read as follows:

Authority: 5 U.S.C. 4501-4507, and 5407.

6. Section 451.306(a) is revised to read as follows:

§ 451.306 Scheduling and use of time-off awards.

(a) Agencies shall establish procedures for scheduling, controlling, and accounting for time-off awards. Such procedures shall include a maximum period of time during which the time-off award may be used, which shall not exceed 1 year from the date granted.

* * * * *

[FR Doc. 92-9269 Filed 4-21-92; 8:45 am]

BILLING CODE 6325-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR PART 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for xerographic printing paper.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for xerographic printing paper. The basis for a waiver is that no small business manufacturers are available to participate in the Federal market for these products. The effect of a waiver will allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: April 22, 1992.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, (703) 695-2435.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act (the Act) the previously existing regulation that recipients of Federal contracts set aside for small business or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor. This requirement is commonly referred to as the nonmanufacturer rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. Section 210 of Public Law 101-574 further amended the Act to allow the SBA to waive the rule if there are no small businesses "available to participate in the Federal procurement market". A participant in the Federal market is a manufacturer that has proposed on, or received a contract for, this class of products from the Federal government within the last 24 months. The SBA defines a class of products based on the Federal Procurement Data System's Product and Service Code (PSC) directory.

The SBA was asked to issue a waiver for garden tractors and powered lawn mowers, pneumatic aircraft tires, and xerographic printing paper because of an apparent lack of any small business manufacturers or processors for them within the Federal market. The SBA searched its Procurement Automated Source System (PASS) for small business participants and found none. We then published a notice in the Federal Register on February 26, 1992 (vol. 57, no. 38, p. 6569), of our intent to grant a waiver for these classes of products unless new information was found. The proposed waiver covered garden tractors and powered lawn mowers (PSC 3750), pneumatic aircraft tires (PSC 2620), and xerographic printing paper (PSC 7530). The notice described the legal provisions for a waiver, how SBA defines the market, and asked for small business participants of these classes of products. After the 15-day comment period, no small businesses were identified for pneumatic aircraft tires and xerographic printing paper. Sources were obtained for garden tractors and powered lawn mowers. Any possible waiver for pneumatic aircraft tires will be addressed at a later date.

This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100-656 for xerographic printing paper. The waiver will last indefinitely but is subject to both an annual review and a review upon receipt of information that the conditions required for a waiver no longer exist. If such information is found, the waiver may be terminated.

Robert J. Moffitt,

Chairman, Size Policy Board.

[FR Doc. 92-9410 Filed 4-21-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of December 12, 1991 (56 FR 64702), that amended the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADA's) from Fermenta Animal Health Co. to A.L. Laboratories, Inc. The document was published with some inadvertent editorial errors in the language amending 21 CFR 558.15. This document corrects those errors.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 12, 1991 (56 FR 64702), FDA issued a rule amending § 558.15 Antibiotic, nitrofurans, and sulfonamide drugs in the feed of animals (21 CFR 558.15) to reflect the change of sponsor of two NADA's from Fermenta Animal Health Co., 10150 North Executive Hills Blvd., P.O. Box 901350, Kansas City, MO 64190-1350, to A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. FDA inadvertently amended all entries for Fermenta Animal Health Co. in § 558.15. The revision of the entry in the table in paragraph (g)(1) for the Type A article "chlortetracycline" is correct. Other revisions in the tables in

paragraphs (g)(1) and (g)(2) are incorrect.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.15 [Corrected]

2. Section 558.15 *Antibiotic, nitrofurans, and sulfonamide drugs in the feed of animals* is corrected in the table in paragraph (g)(1) under the heading "Type A article" for the entry "bacitracin methylene disalicylate" by revising the drug sponsor name to read "A.L. Laboratories, Inc., Fermenta Animal Health Co." and for the entry "chlortetracycline, sulfathiazole, and penicillin" by revising the drug sponsor name to read "Fermenta Animal Health Co.", and in the table in paragraph (g)(2) under the heading "Type A article" for the entry "chlortetracycline and arsanilic acid" by revising the drug sponsor name to read "Fermenta Animal Health Co."

Dated: April 7, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-9266 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-92-04]

Special Local Regulations: 1992 America's Cup Regatta; San Diego Bay and Mission Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: Special local regulations are being adopted for the 1992 America's Cup Regatta. This event will be held May 9, 1992 through May 30, 1992 in the waters of the Pacific Ocean adjacent to

San Diego Bay and Mission Bay. These regulations are needed to provide for the safety of life, property, and navigation on the navigable waters of the United States during the event.

DATES: These regulations will be effective from April 22, 1992 through May 30, 1992. Comments must be received on or before May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822-5399, telephone (310) 499-5410.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. There was not sufficient time to publish proposed rules in advance to provide for a delayed effective date. Although this rule is published without prior notice, public comment is nevertheless desirable to ensure that the regulations are workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822-5399. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Discussion of Regulations

These regulations provide for safe navigation on the waters of San Diego Bay, Mission Bay, and the America's Cup race venue during the regatta. The anticipated volume of spectator and participant traffic associated with the races is such that special operating regulations are deemed necessary to protect the life and property of all involved. In the past, vessel traffic in San Diego Bay associated with major yacht races caused significant traffic congestion. These regulations are intended to control the traffic in the harbors and at the race venue to protect persons and property from hazards associated with the anticipated high traffic density. To do this, a channel within San Diego Bay, within certain hours, has been designated for the sole and required use of IACC vessels. This channel is adjacent to the dredged main ship channel and bounded by the shoreline of North Island. Within this channel, speed limits and operating

requirements have been established for orderly passage to and from the IACC shore facilities and race venue. This channel will pass through the Security Zone listed in § 165.1105 of title 33 of the Code of Federal Regulations adjacent to naval piers J through P on the western shore of North Island. The Navy has been notified of this conflict and has authorized passage for IACC vessels during scheduled times discussed in the regulations, barring any unforeseen security requirements. As necessary, special modifications to the regulations concerning this restricted area will be made and announced in Broadcast Notice to Mariners.

Speed limits and operating requirements are also established for other vessel traffic operating within the harbors during times when most IACC and spectator vessels are expected to transit the harbors. Sailing by vessels in the harbors during these times will not be allowed except for motorsailing with only the mail sail set and specific near shore areas in San Diego Bay. The regulations also provide that, if deemed necessary by the Coast Guard Patrol Commander, one-way traffic will be implemented to ensure the safety of navigation. Additionally, several nonanchorage areas are established for the period of these regulations to promote smooth traffic flow and ensure access to docks and piers.

Regulations for the race venue are included in these Special Local Regulations to minimize navigational dangers and ensure the safety of vessels participating in and viewing the races.

All vessels operating within the regulated areas are subject to citation for failure to comply.

Similar regulations were enforced during the 1991 International America's Cup Class (IACC) World Championship races resulting in safe egress and ingress of the harbor and safe execution of the regatta at the venue. Based on recommendations made by the public, restrictions on sailing in San Diego Bay have been reduced to allow those vessels without mechanical power to sail within specified areas of the bay when the regulations are in effect. Wording was also modified to better describe the different types of official craft.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT policies and procedures (44 FR 11034; February 26, 1979). The Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information under the Paperwork Reduction Act and 5 CFR part 1320 has been approved by a blanket OMB approval for 33 CFR part 100. Approval number 2115-0017.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-1104 is added to read as follows:

§ 100.35-1104 Regulated Navigation Area: San Diego Bay, Mission Bay and IACC Race Venue, California.

(a) *Regulated Area.* These regulations pertain to the navigable waters of San Diego Bay, Mission Bay, and the International America's Cup Class (IACC) race venue. Within San Diego Bay there are several areas with specific regulations. The regulated areas are defined by the following:

(1) *San Diego Bay.* The water area seaward of the San Diego-Coronado Bay Bridge to the COLREGS Demarcation Line, less, Shelter Island Yacht Basin, Commercial Basin, West and East Basin, and Inter-Continental Marina.

(2) *America's Cup Channel.* The water area bounded by the following:

Zuniga Jetty Light "Z" (LLNR 1520)

32°39'59.5" N 117°13'36.2" W

32°41'44.1" N 117°13'51.8" W Buoy "14"

32°42'06.5" N 117°13'45.0" W Buoy "16"

32°42'22.5" N 117°13'34.2" W Buoy "16A"

32°42'47.4" N 117°13'02.0" W Buoy "18"
 32°43'00.0" N 117°12'25.0" W Buoy "20"
 32°43'03.0" N 117°11'39.8" W
 32°42'31.4" N 117°10'43.5" W Buoy "22"
 32°41'54.6" N 117°09'54.3" W Buoy "24"
 Pier 18 San Diego—Coronado Bay Bridge
 Pier 15 San Diego—Coronado Bay Bridge
 32°41'40.5" N 117°09'49.0" W
 32°41'52.3" N 117°09'56.5" W
 32°42'21.6" N 117°10'48.0" W
 32°42'44.5" N 117°11'14.0" W
 32°42'52.0" N 117°11'24.5" W

thence along the shoreline to Zuniga Jetty Light "V" (LLNR 1540), and, along the submerged jetty to the point of origin.

Datum: NAD 83.

(3) *San Diego Bay Non-Anchorage Areas.* The water areas bounded by the following:

(i) NA-1:

32°41'17.8" N 117°13'56.7" W
 32°41'17.4" N 117°14'01.0" W
 32°41'32.0" N 117°14'03.8" W
 32°41'34.5" N 117°13'58.5" W

Datum: NAD 83.

(ii) NA-2:

32°41'51.3" N 117°13'57.5" W
 32°41'56.4" N 117°14'12.9" W
 32°42'10.5" N 117°14'04.0" W

Entrance Range Front Light (LLNR 1500)

32°42'12.9" N 117°13'50.0" W

Datum: NAD 83.

(iii) NA-3:

32°42'41.0" N 117°13'22.0" W
 32°42'52.8" N 117°13'24.6" W
 Shelter Island Light "S" (LLNR 1640)
 32°42'49.0" N 117°13'13.0" W

Datum: NAD 83.

(iv) NA-4:

32°42'55.2" N 117°13'04.0" W
 32°43'05.7" N 117°13'04.0" W
 32°43'19.7" N 117°13'00.0" W
 32°43'24.5" N 117°12'51.8" W
 32°43'08.1" N 117°12'58.0" W
 32°42'58.1" N 117°12'54.1" W

Datum: NAD 83.

(v) NA-5:

32°43'00.8" N 117°11'23.0" W
 south west corner of "B Street" Pier and the shoreline to the north west corner of "C Street" Pier to

32°42'46.2" N 117°10'58.19" W

Datum: NAD 83.

(4) *Mission Bay.* The water area seaward of the West Mission Bay Bridge to the COLREGS Demarcation Line, less, Mariners Basin and Quivira Basin.

(5) *IACC Race Venue.* The navigable waters of the United States seaward of the San Diego Bay COLREGS Demarcation Line between 32°—35.0' N and 32°—44.0' N, west of 117°—13.3' W. (Datum: NAD 83)

(b) *Definitions.*

(1) *Spectator Vessels.* All vessels not registered with the race sponsor as participants or those not designated as official patrol vessels are considered spectator craft.

(2) *Participant.* Any vessel registered with a race syndicate, including tow boats, tenders, and chase boats, or, registered with the race sponsor as an official or media boat carrying an assigned flag.

(3) *Official Patrol Vessels.* Official patrol vessels are all U.S. Coast Guard, U.S. Coast Guard Auxiliary, state and local law enforcement vessels and race organization vessels so designated by the Patrol Commander and flying the official patrol vessel flag.

(4) *Regulatory Periods.* Specified times of the day when these special local regulations are in effect. The morning regulatory period is 10 a.m.—12 noon and the afternoon regulatory period is 3:30 p.m.—5:30 p.m. These regulatory periods are effective on the scheduled race days:

(i) April 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, May 1, 9, 10, 12, 14, 16, 17, 19, 21, 23, 24, 26, 28, 30, and as otherwise ordered by the Patrol Commander by Broadcast Notice to Mariners.

(5) *Patrol Commander.* A Patrol Commander has been designated by the Commander, Eleventh Coast Guard District. The Patrol Commander has the authority to control the movement of all vessels operating in the regulated areas and may suspend the regatta at any time it is deemed necessary for the protection of life and property. [Note: The Patrol Commander may be contacted during the effective dates of VHF/FM Channel 16 (156.8 MHz) or Channel 22 (157.1 MHz) by calling "Coast Guard Patrol Commander."]

(c) *Special Local Regulations.*

(1) *San Diego Bay/America's Cup Channel.*

(i) On the days these regulations are in effect and during the specified regulatory periods in subparagraph (b)(4) of this section, the following regulations will be enforced:

(A) All participants shall use the America's Cup Channel for entering and departing San Diego Bay and shall not exceed 10 knots speed.

(B) Participants shall not operate their vessels under sail within the America's Cup Channel or within San Diego Bay without the permission of the Patrol Commander. Participants will be under power or will be towed while transiting the America's Cup Channel.

(C) Spectator vessels shall not operate under sail alone within the regulated area and shall not exceed 10 knots speed. Motorsailing with only the main sail set is authorized. Tacking is not allowed. Sailing is allowed in the portion of the San Diego Bay regulated area east of a line drawn between:

32°42'58.1" N 117°12'54.1" W

32°43'19.8" N 117°13'02.8" W
 and bound to the south along the dredged channel boundary at the following points:

32°42'58.1" N 117°12'54.1" W
 32°43'09.0" N 117°12'15.8" W
 32°43'06.0" N 117°11'36.0" W Buoy "21"
 32°42'12.0" N 117°10'12.1" W Buoy "23"
 32°41'30.5" N 117°09'05.1" W;

thence north along the San Diego-Coronado Bay Bridge to the shore.

Datum: NAD 83.

(D) Spectator vessels shall not enter the American Cup Channel during the regulatory period unless an emergency exists. Vessels shall immediately notify the Coast Guard Patrol Commander on VHF/FM Channel 16 (156.8 MHz) of any emergencies.

(E) Spectator vessels shall not loiter within the regulated area so as to disrupt the orderly flow of traffic.

(F) All vessels shall obey the orders given by official patrol vessels.

(G) The America's Cup Organizing Committee (ACOC) shall notify the Patrol Commander at least 24 hours in advance of any changes to the desired regulatory periods defined in subparagraph (b)(4) of this section so proper notice can be given to the public via Broadcast Notice to Mariners.

(ii) Vessels shall not anchor in non-anchorage areas listed in paragraph (a)(3) of this section during the effective dates of these special local regulations unless an emergency exists. Vessels will immediately notify the Coast Guard Patrol Commander on VHF/FM Channel 16 (156.8 MHz) of any emergencies.

(2) *Mission Bay.* On the days these regulations are in effect and during the specified regulatory periods in paragraph (b)(4) of this section, the following regulations will be enforced:

(i) Vessels shall not exceed 5 mph.

(ii) Vessels shall not operate under sail alone within this regulated area. All vessels will be under power or will be towed while transiting this regulated area. Motorsailing with only the main sail set is authorized. Tacking is not allowed.

(iii) Vessels shall not anchor or loiter within this regulated area unless an emergency exists. Vessels shall immediately notify the Coast Guard Patrol Commander on VHF/FM Channel 16 (156.8 MHz) of any emergencies.

(iv) All vessels shall obey the orders given by official patrol vessels.

(v) The America's Cup Organizing Committee (ACOC) shall notify the Patrol Commander at least 24 hours in advance of any changes to the desired regulatory periods defined in paragraph (b)(4) of this section so proper notice can be given to the public via Broadcast Notice to Mariners.

(3) *IACC Race Venue*. On the days of racing stated in paragraph (b)(4) of this section, the following regulations will be enforced at the venue from 10 a.m. to 5:30 p.m.:

(i) No spectator or participant vessel shall exceed 10 knots speed while proceeding to or from the race venue during the regulatory period.

(ii) Spectator vessels shall keep clear of any official patrol vessel or participant vessel and keep clear of the regulated area.

(iii) Spectator vessels shall remain outside the line of patrol vessels marking the course perimeter. Spectator vessels shall not enter the boundaries of the race area as defined by the line of official patrol vessels bordering the race course.

(iv) Participant vessels within the boundaries of the course perimeter shall heed the orders of official patrol vessels.

(v) All vessels not involved in this event are to remain clear of the venue for the safety of the competitors and fairness of the competition.

(vi) The America's Cup Organizing Committee (ACOC) shall notify the Patrol Commander at least 24 hours in advance of any changes to the desired regulatory period defined in paragraph (c)(3) of this section so proper notice can be given to the public via Broadcast Notice to Mariners.

(4) *One-Way Traffic*. The Patrol Commander may implement one-way traffic patterns in the regulated areas of San Diego Bay and Mission Bay, during the effective dates of these regulations, if deemed necessary to ensure safe navigation. Notice of one-way traffic will be made by Broadcast Notice to Mariners. If implemented, vessel traffic will be required to transit the regulated areas in either a northerly direction, proceeding into port, or southerly direction, proceeding to sea, during the regulatory periods and abide by all other special local regulations associated with the regulated area.

(5) *Deviations from the Regulations*. Vessel operators must request from the Patrol Commander to deviate from these regulations. Requests will be evaluated case-by-case and approved based on vessel limitations to comply with these regulations.

(d) *Effective dates*. These regulations will be effective April 22, 1992 through May 30, 1992.

Dated: March 30, 1992.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 92-9351 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-92-012]

Drawbridge Operation Regulations; Stoney Creek, Riviera Beach, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maryland Department of Transportation, State Highway Administration, the Coast Guard is changing the regulations governing the operation of the drawbridge across Stoney Creek, mile 0.9, at Riviera Beach, Maryland, by further restricting bridge openings during weekday evening rush hours and by implementing new bridge opening restrictions on weekends. These changes to the regulations are, to the extent practicable and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on May 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Regulatory History

On January 10, 1992, the Coast Guard published proposed rules in the *Federal Register* (57 FR 1138) concerning this amendment. Interested persons were given until February 24, 1992, to submit comments.

Background and Purpose

Maryland Department of Transportation requested a change to the regulations to further restrict drawbridge openings for the passage of vessels during evening rush hours by expanding the current restricted hours of 4 p.m. to 6 p.m. to 3:30 p.m. to 6:30 p.m., on Monday through Friday, except Federal and State holidays. The optional opening at 5 p.m. would remain the same. The weekend schedule will also be changed from opening on demand to opening on the hour and half-hour from 11 a.m. to 7 p.m. on Saturdays, and from 12 p.m. to 5 p.m. on Sundays, with the bridge opening on demand the remainder of the time. The current weekday morning restrictions are from

6:30 a.m. to 9 a.m. with an optional opening at 7:30 a.m.. This will remain the same. The Coast Guard issued the Notice of Proposed Rulemaking after MDDOT presented facts that revealed the volume of vehicular traffic on weekends between the hours of 11 a.m. to 7 p.m. on Saturdays and 12 p.m. to 5 p.m. on Sundays were the same as the volume of traffic during weekday evening rush hours of 3:30 p.m. to 6:30 p.m. The existing provision that the bridge opens on signal for public vessels of the United States and vessels in an emergency involving danger to life or property will remain unchanged.

Discussion of Comments

No comments were received. The enactment of the final rule should have no adverse impact on the mariners that transit Stoney Creek. Recreational and commercial vessels will be minimally impacted during the weekday morning and evening rush hours.

Regulatory Evaluation

This action is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that commercial vessels will not be totally restricted during the morning and evening rush hours, since an opening will be provided once in the morning and once in the evening.

Small Entities

No comments were received concerning small entities or on the economic impact this rule would have on small entities. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory/Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to

warrant preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying at Commander(ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. § 117.573 is revised to read as follows:

§ 117.573 Stoney Creek.

The draw of the Stoney Creek (S173) bridge, mile 0.9, in Riviera shall open on signal, except:

(a) From 6:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday except Federal and State holidays, the draw need be opened only at 7:30 a.m. and 5 p.m. if any vessels are waiting to pass.

(b) From 11 a.m. to 7 p.m. on Saturday and from 12 p.m. to 5 p.m. on Sunday, the draw need be opened only on the hour and half hour.

(c) Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: April 7, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-9350 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 11-92-02]

Drawbridge Operation Regulations; Mokelumne River, Sacramento County, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule with request for comments.

SUMMARY: At the request of the California Department of Transportation (CALTRANS), the Coast Guard is again establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Mokelumne River east of Isleton, California (the Mokelumne River Bridge), to limit openings for recreational vessels to three times an hour during peak highway traffic periods. This temporary regulation is being established to reduce serious highway traffic congestion at the bridge. Since this action should accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

DATES: This rule becomes effective on May 1, 1992 and terminates on October 31, 1992. Comments must be received on or before October 31, 1992.

ADDRESS: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, room 214, Building 10, Coast Guard Island, CA 94501-5100. The comments will be available for inspection and copying during normal work hours between 7 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch (telephone: (510) 437-3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent serious highway traffic tieups on Highway 12, the principal east-west connecting roadway in the California Delta. A comment period is being provided during the entire period the temporary regulation is in force; comments should be mailed to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number, and give reasons for their support or opposition. A Local Notice to Mariners has been issued. A similar regulation was implemented during the 1990 and 1991 boating seasons and was found to improve overland transportation without significant effect on water transportation. During the time this regulation has been in effect, the Coast Guard has received only five comments about the regulation, three for and two against. If the 1992 implementation is

successful, it is the intent of the Coast Guard to make this regulation permanent beginning with the 1993 boating season.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g(5) of Commandant Instruction M16475.1B.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since there is little economic impact, a full regulatory evaluation is unnecessary, and the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Wayne R. Till, project officer, and Lieutenant Steve M. Fitten, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

Highway 12 is the main east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways on drawbridges: the Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, it carries as many as 1,100 vehicles per hour on holiday weekends and has traffic backups as long as 8 miles. The Little Potato Slough drawbridge was rebuilt in 1991 and provides 35 feet clearance over Mean High Water (MHW) in the closed position. It accommodates most recreational boats without a need for

bridge openings. The Rio Vista Bridge provides 18 feet clearance over MHW when closed, and accommodates many recreational boats without a need for a bridge opening. The Mokelumne River Bridge is the lowest drawbridge on Highway 12, providing only 11 feet clearance in the closed position, and must open for many recreational boats.

Current regulations require the Mokelumne River Bridge to open on call from 6 a.m. until 10 p.m. during the summer. The temporary regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. Those peak periods are from 10 a.m. to 2 p.m. Saturdays and from 11 a.m. to 6 p.m. Sundays and holidays. Openings for commercial vessels are infrequent on weekends and holidays, and it is not safe for commercial vessels to stop in the narrow channel. Accordingly, commercial vessels are excluded from the regulation and will be provided openings upon signal.

A similar regulation was tested in August-September of 1988 and implemented on a temporary basis in both 1990 and 1991. During the 1988 test, the Coast Guard received one letter in support of the regulation from a business firm and one letter in opposition from a yacht club. During 1990, the Coast Guard received two letters in support of the regulation, one from the same business firm and one from another business firm, and one letter in opposition from a marina operator. There were no comments in 1991. The yacht club expressed concern about the possible hazard to vessels waiting for openings during adverse weather conditions or due to congestion. The marina operator expressed concern for the safety of vessels fueling at his dock near the bridge. The Coast Guard observed the bridge operation and concluded that there is adequate room in the channel for vessels to safely await bridge openings, and the adjacent levees adequately shelter waiting vessels from the strong afternoon winds. The regulation had no noticeable effect on the safety of vessels waiting for bridge openings or vessels using the nearby fuel dock. This temporary regulation has two minor changes to the regulations implemented in 1988 and 1990. The regulation now covers the summer holidays in addition to Saturdays and Sundays. Additionally, the Coast Guard proposes to revise the requirement to provide emergency openings from "no later than one hour after notice has been given" to "as soon as possible" to be consistent with other

drawbridge regulations. CALTRANS has a road crew on duty at all times which is trained to provide bridge openings and response time is less than one hour.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 of the Code of Federal Regulations is revised as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

California

§ 117.175 Mokelumne River. [Revised]

2. Section 117.175 is amended by revising paragraph (a) to read as follows:

§ 117.175 Mokelumne River.

(a) The draw of the California Department of Transportation highway bridge, mile 3.0, at East Isleton (the Mokelumne River Bridge):

(1) Shall open upon signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least 4 hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. The draw shall open as soon as possible for emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, and vessels in distress.

(2) Shall open upon signal, as specified in paragraph (a)(1) of this section from May 1, 1992, to October 31, 1992, except that the bridge need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour during the following times:

Saturdays—10 a.m. until 2 p.m.

Sundays—11 a.m. until 6 p.m.

Memorial Day; 4th of July; and Labor

Day—11 a.m. until 6 p.m.

* * * * *

Dated: March 30, 1992

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander,
Eleventh Coast Guard District.

[FR Doc. 92-9273 Filed 4-21-92; 8:45 am]

BILLING CODE 491-014-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300222A; FRL-3873-6]

Parasitic and Predaceous Insects Used to Control Insect Pests; Exemption From a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes an exemption from the requirement of a tolerance for parasitic (parasitoid) and predaceous insects used to control insect pests of stored raw whole grains such as corn, small grains, rice, soybeans, peanuts, and other legumes either bulk or warehoused in bags. This regulation is issued with the consultation and cooperation of the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA) and is intended to improve worker safety and effective grain pest control.

EFFECTIVE DATE: This regulation becomes effective April 22, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300222A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa L. Chun, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6354.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 3, 1991 (56 FR 234), EPA issued a proposed rule to exempt from the requirement of a tolerance insect parasites (parasitoids) and predators used to control insect pests of stored raw whole grains such as corn, small grains, rice, soybeans, peanuts, and other legumes either bulk or warehoused in bags. The proposal limited the exemption to situations "where these insects are not expected to become a component of food." EPA believes that parasitic insect parts will generally be removed from the above-named commodities during processing. Nonetheless, at some point during the production, storage, or handling of food, especially prior to processing, EPA expects that some insect parts may be

found mixed with commodities. Thus, to clarify this exemption for enforcement purposes the condition pertaining to the expectations of users of parasitic insects has been deleted. These insects may also be used as control agents in facilities and structures used for such storage, as well as general purpose food storage warehouses, for disinfestation where these insects do not become a component of food. The proposal was issued with the consultation and cooperation of the USDA and the FDA and is intended to improve worker safety and effective grain pest control.

There were no requests for referral to an advisory committee received in response to the proposed rule.

Comments on Proposed Rule and Agency Responses to Comments

The Agency received 11 comments in support of the proposed rule. Five significant comments were received from the following sources: Biofac, Inc. (Biofac), the Texas Department of Agriculture (TDA), the National Food Processors Association (NFPA), the Cooperative Extension Service (CES), and David K. Mueller, a registered professional entomologist. The substance of these comments and the Agency's responses to them are addressed below.

A. Additional Parasitic (Parasitoid) and Predatory Insects Proposed as Biological Control Agents

Comments received from Biofac and TDA suggested the addition of the parasitic mite, *Pyemotes tritici* and the genus *Plastanoxus*, a bethylid, to the list of exempted parasitic (parasitoid) and predaceous insects. However, these insects were not included in the proposal, and EPA believes it would be appropriate to obtain public comment on exempting these insects prior to granting an exemption. Biofac and TDA may petition EPA under section 408(e) of the FFDCA to exempt these insects from the requirement for a tolerance. Any petition must contain appropriate supporting documentation.

B. Definition of Term "Areas Not Accessible to Standard Control Measures"

NFPA commented that the proposed language "areas not accessible to standard control measures" is unclear and would not permit the use of parasites (parasitoids) or predators, since chemical pest control agents, such as grain fumigants, can be applied virtually everywhere. Further, NFPA suggests that such language be removed from the text. The applicable portion of

§ 180.1101 reads as follows in the proposed rule:

These insects may be used as control agents in facilities and structures used for such storage, as well as general purpose food storage warehouses, for disinfestation of areas not accessible to standard control measures where these insects do not become a component of food.

After consultation with USDA and FDA, EPA has amended § 180.1101 to delete this entire sentence from the regulation. This change is intended to eliminate any confusion about the use of these insects as pest control agents.

C. Regulation/Efficacy

Comments received from CES and David K. Mueller suggested that consideration should be given to certain factors which are related to the setting of a tolerance for the residue of chemical pesticides. The purpose of this rule is to provide an exemption from the requirement of a tolerance for the residues from the use of beneficial insects in the control of stored product pests. Many considerations pertaining to chemical pesticides are not applicable to beneficial insects used as pesticides.

D. The Presence of Beneficial Insects in Whole Grain

CES also raised the issue of whether the introduction of beneficial insects would increase the presence of insects and insect parts in whole grain.

The agencies are not aware of any evidence associated with the use of parasites (parasitoids) and predators of insect pests that would indicate an increase in fragment counts in processed products. As noted in the preamble to the proposed rule, adding biological control agents to stored grain will not lead to an increase in insect fragments, but may serve to reduce the total number of primary insect parts and therefore the amount of fragments in milled commodities.

In any event, the public is protected from excess amounts of insect fragments in food or animal feed by 21 U.S.C. 342(a)(3), which declares food consisting in whole or in part of "any filthy, putrid, or decomposed substance" to be adulterated. For the sake of clarification, EPA has added a reference to 21 U.S.C. 342(a)(3) in the final rule.

E. Human Health Effects to Workers

CES expressed concern that the parasites and predators that have been recommended for use as biological control agents are harmful to individuals working in food warehouses or grain storage facilities, but provided no data or other information suggesting that such concern would be justified.

As stated in the proposal, EPA, USDA, and FDA are not aware of any adverse human health effects associated with the use of parasites (parasitoids) and predators of insect pests of stored grain including those used for seed or animal feed purposes. Generally, they avoid humans and prefer insect prey, but if trapped against the skin, they may on rare occasions impart a mild bite. These insects are regarded as safe to raise in large numbers and to be handled and released by unskilled workers. They would typically be released in grain storage areas at times when few or no workers would be present to minimize their tendency to escape. Beneficial insects have been raised and sold by at least 60 companies in the United States, and there have been no reports of adverse human health effects associated with their production and sale.

F. Basis for Adoption of Final Rule

Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance will protect the public health. Therefore, EPA finds it is appropriate to make the rule final at this time.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances

or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: March 26, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, new § 180.1101 is added, to read as follows:

§ 180.1101 Parasitic (parasitoid) and predatory insects; exemption from the requirement of a tolerance.

Parasitic (parasitoid) and predatory insects are exempted from the requirement of a tolerance for residues when they are used in accordance with good agricultural and pest control practices to control insect pests of stored raw whole grains such as corn, small grains, rice, soybeans, peanuts, and other legumes either bulk or warehoused in bags. For the purposes of this rule, the parasites (parasitoids) and predators are considered to be species of Hymenoptera in the genera *Trichogramma*, *Trichogrammatidae*; *Bracon*, *Braconidae*; *Venturia*, *Mesostenus*, *Ichneumonidae*; *Anisopteromalus*, *Choetospila*, *Lariophagus*, *Dibrachys*, *Habrocytus*, *Pteromalus*, *Pteromalidae*; *Cephalonomia*, *Holepyris*, *Laelius*, *Bethylidae*; and of Hemiptera in the genera *Xylocoris*, *Lyctocoris*, and *Dufouriellus*, *Anthocoridae*. Whole insects, fragments, parts, and other residues of these parasites and predators remain subject to 21 U.S.C. 342(a)(3).

[FR Doc. 92-9089 Filed 4-21-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-305; RM-7825]

Radio Broadcasting Services; Lovington, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lea County Broadcasting, substitutes Channel 269C3 for Channel 269A at Lovington, New Mexico, and modifies the license of Station KLEA-FM to specify operation on the higher class channel. See 56 FR 55862, October 30, 1991. Channel 269C3 can be allotted to Lovington in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (4.9 miles) south to accommodate petitioner's desired transmitter site, at coordinates North Latitude 32-52-43 and West Longitude 103-19-12. Mexican concurrence in the allotment has been received since Lovington is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-305, adopted April 8, 1992, and released April 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the 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, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 269A and adding Channel 269C3 at Lovington.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-9425 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-67, FCC 92-165]

Broadcast Services; License Renewal Announcement Requirements for Low Power Television, Television Translator, Television Booster, FM Translator, and FM Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order (R&O) amends the low power television (LPTV) license renewal announcement requirements found in Section 73.3580 of the Commission's Rules, 47 CFR § 73.3580. Specifically, we modify the text and timing of the broadcast announcements required of locally originating LPTV operators to more accurately reflect LPTV licensing renewal obligations, and adjust the timetable for LPTV broadcast renewal announcements to reflect that these licensees do not necessarily operate on a set broadcast schedule. This action responds to a petition filed by Community Broadcasters Association (CBA), and is taken to clarify the license renewal announcement requirements for low power television operators. The Notice of Proposed Rule Making (Notice) initiating this proceeding may be found at 56 FR 13445 (April 2, 1991).

EFFECTIVE DATE: May 26, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Brien Ham, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 91-67, adopted March 26, 1992, and released April 9, 1992.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This R&O amends the LPTV license renewal announcement requirements found at 47 CFR § 73.3580. Specifically, we modify the text and timing of the broadcast announcements required of locally originating LPTV operators to more accurately reflect LPTV licensing renewal obligations. Thus, these licensees will no longer be required to broadcast information suggesting that there is a public inspection file at the station containing the renewal application and other information on the license renewal process. In addition, we adjust the timetable for LPTV broadcast renewal announcements to reflect the fact that these licensees do not necessarily operate on a set broadcast schedule.

2. The current rules provide that LPTV licensees that locally originate programming are governed by 47 CFR 73.3580(d)(1) and must broadcast their announcements on their stations, and that other LPTV operators are subject to § 73.3580(g) and are only required to publish their announcements in a local newspaper. Both types of announcements must contain basic facts informing the public that the licensee has applied for renewal of its license. This proceeding was initiated in response to a petition filed by CBA, identifying problems with the text and timing of announcements required of locally originating LPTV operators. CBA, for example, cited a problem stemming from the requirement that locally originating LPTV operators make various pre-filing and post-filing announcements at a number of specific times throughout the broadcast days. CBA pointed out that LPTV operators may not be able to comply with this timetable because they do not necessarily operate on a set broadcast schedule (and, indeed, are not required to so operate). Another problem is that the broadcast text contains statements that do not accurately reflect LPTV licensing renewal obligations. Specifically, the text implies that LPTV licensees must maintain a public inspection file at the station that contains the renewal application and information concerning the license renewal process. The actions enacted in the R&O resolve these problems identified by CBA.

3. Therefore, we will continue to require locally originating LPTV operators to broadcast their renewal announcements, but we will clarify the requirements in the Rules to eliminate references that are inapplicable to LPTV licensees. We will not adopt a newspaper notice requirement for

locally originating operators because we find that the best way to obtain informed comments about the licensee and past operations of a locally originating LPTV station is to require the broadcaster to notify its viewers over-the-air of its renewal application. Full-service broadcasters are required to broadcast their renewal announcements for this reason and we believe this same rationale applies to LPTV licensees that offer local programming. We note, however, that while a broadcast renewal announcement is the preferred way of informing the public of impending renewal, it is simply not technically feasible for non-originating stations, which will continue to be subject to the newspaper publication requirement.

4. LPTV operators that originate local programming will still be required to broadcast their renewal announcements. However, as reflected below, we are modifying those parts of § 73.3580 that do not accurately reflect LPTV scheduling requirements and licensing obligations. Thus, locally originating licensees will be allowed to air their pre- and post-filing renewal announcements at times permitted by their broadcast schedule that are closest to the times now designated in the rules for commercial TV stations. Additionally, we will no longer require these licensees to make statements in their pre- and post-filing renewal announcements indicating that there is a public inspection file at the station containing the renewal application and other information on the license renewal process. Finally, we will require non-originating LPTV operators and FM and TV translators, now subject to a newspaper notice under § 73.3580(g), to inform the public in the newspaper notice that it may participate in the renewal process.

Final Regulatory Flexibility Analysis Statement

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a positive impact on a substantial number of small entities because it clarifies and updates the license renewal announcement requirements, making them easier to understand and comply with and more effective in meeting the needs of the licensees and the public.

6. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No.

96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.*, (1981)).

7. Accordingly, *it is therefore ordered* That pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, part 73 of the Commission's Rules is amended as set forth below.

8. *It is further ordered* That the amendments to 47 CFR part 73 adopted in the Report and Order will be effective on May 26, 1992.

Further Ordered that Gen. Docket No. 95-54 is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory text

Part 73 of title 47 of the Code Of Federal Regulations is amended to read as follows:

1. The Authority Citation for part 73 continues to read as follows:

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

2. Section 73.3580 is amended by revising paragraphs (d)(1) and (g)(1)(ii)(G), by revising the first two sentences of paragraph (g) introductory text and the second sentence in paragraph (h), by redesignating existing paragraphs (d)(4)(i)(A) and (d)(4)(ii)(A) as (d)(4)(i)(B) and (d)(4)(ii)(B), by adding new paragraphs (d)(4)(i)(A) and (d)(4)(ii)(A) and by adding paragraphs (d)(4)(i)(B)(4), (d)(4)(ii)(B)(4) and (g)(1)(ii)(H) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(1) An applicant who files for renewal of a broadcast station license, other than a low power TV station license not locally originating programming as defined by § 74.701(h), an FM translator station or a TV translator station license, must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required. An applicant who files for renewal of a low power TV station license not locally originating programming as defined by § 74.701(h), an FM translator station or a TV translator station license will comply with (g) below.

* * * * *

(A) An applicant who files for renewal of a low power TV station locally originating programming (as defined by § 74.701(h)) shall broadcast

this announcement, except that statements indicating there is a public inspection file at the station containing the renewal application and other information on the license renewal process, shall be omitted.

(B) * * *

(4) For low power TV stations locally originating programming (as defined by § 74.701(h)), at the same time as for commercial TV stations, or as close to that time as possible.

(ii) * * *

(A) An applicant who files for renewal of a low power TV station locally originating programming (as defined by § 74.701(h)) shall broadcast this announcement, except that statements indicating there is a public inspection file at the station containing the renewal application and other information on the license renewal process, shall be omitted.

(B) * * *

(4) For low power TV stations locally originating programming (as defined by § 74.701(h)), at the same time as for commercial TV stations, or as close to that time as possible.

* * *

(g) An applicant who files for authorization or major modifications, or a major amendment thereto, for a low power TV, TV translator, TV booster, FM translator, or FM booster station, must give notice of this filing in a daily, weekly or biweekly newspaper of general circulation in the community or area to be served. Likewise, an applicant for assignment, transfer or renewal, or a major amendment thereto, for a low power TV, TV translator or FM translator station, must give this same type of newspaper notice. * * *

(1) * * *

(ii) * * *

(G) A statement, if applicable, that the station engages in or intends to engage in rebroadcasting, and the call letters, location and channel of operation of each station whose signals it is rebroadcasting or intends to rebroadcast.

(H) A statement that invites comment from individuals who wish to advise the FCC of facts relating to the renewal application and whether the station has operated in the public interest.

(h) * * * However, an applicant for renewal of a license that is required to maintain a public inspection file, shall, within 7 days of the last day of broadcast of the required publication announcements, place in its public inspection file a statement certifying compliance with § 73.3580 along with the dates and times that the pre-filing

and post-filing notices were broadcast and the text thereof. * * *

* * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 92-0420 Filed 4-21-92; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 514, 532, and 552

[APD 2800.12A CHGE 37]

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy,
GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise section 501.105 to update the list of OMB control numbers; revise section 501.170-1 to update the handbook reference; revise section 501.603-70 to amend paragraphs (h)(1)(ii) to refer to Basic Procurement or Introduction to Contracting and to amend paragraph (h)(1)(v) to delete the requirement for the Advanced Procurement Management Course; revise section 514.406-3 to substitute "contracting director" for the "Head of the contracting activity" so that determination regarding mistakes in bids may be made by contract directors; delete section 532.502-3, which is no longer needed by contracting activities; revise paragraph (b) of clause 552.223-72 to delete an obsolete reference to Federal Standard 313B and to make the definition consistent with FAR 52.223-3; delete section 552.232-74, which is no longer needed by the contracting activities and to illustrate the February 1992 edition of the GSA Form 3503, Representations and Certifications. Copies of GSA Forms may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., Washington, DC 20405. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: April 30, 1992, however, may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it does not have a significant effect beyond the internal operating procedures of the agency.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply because the proposed rule was not required to be published in the Federal Register.

D. Paperwork Reduction Act

The paperwork reduction act does not apply because the rule does not impose any recordkeeping requirements or information collection requirements on contractors or the public that require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR parts 501, 514, 532 and 552 continues to read as follows: Government procurement.

48 CFR parts 501, 514, 532, and 552 are amended as set forth below.

1. The authority citation for 48 CFR parts 501, 514, 532 and 552 continues to read as follows.

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.105 is revised to read as follows:

501.105 OMB Approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

GSAR reference	OMB control No.
507.305.....	3090-0104
509.105-1(a).....	3090-0007
510.004-70.....	3090-0203
510.011(f).....	3090-0246
512.104(a)(2).....	3090-0204
512.104(a)(4).....	3090-0204
514.201(7)(a).....	3090-0200
516.203-4(b).....	3090-0243
516.505.....	3090-0248
519.708(b).....	3090-0252
522.406-6.....	1215-0140
523.370.....	3090-0205
525.105-70(d).....	3090-0198
525.205.....	3090-0240
532.502-3.....	3090-0229
532.905-70.....	9000-0102
532.905-71.....	3090-0080

GSAR reference	OMB control No.
537.110(a)	3090-0197
537.110(b)	3090-0006
538.203-71(a)	3090-0121
538.203-72(b)	3090-0250
542.1107	3090-0027
546.302-70	3090-0027
546.302-71	3090-0027
546.570	3090-0227
552.207-70	3090-0104
552.210-74	3090-0203
552.210-79	3090-0246
552.212-1	3090-0204
552.212-71	3090-0204
552.214-75	3090-0200
552.216-71	3090-0243
552.216-73	3090-0248
552.219-73	3090-0252
552.223-71	3090-0205
552.225-70	3090-0198
552.225-75	3090-0240
552.228-74	3090-0189
552.232-74	3090-0229
552.232-79	3090-0080
552.237-70	3090-0197
552.237-71	3090-0006
552.238-70	3090-0250
552.238-72	3090-0121
552.242-70	3090-0027
552.246-70	3090-0027
552.246-72	3090-0027
552.249-71	3090-0227
GSA-72	3090-0121
GSA-72-A	3090-0121
GSA-527	3090-0007
GSA-618-D	1215-0149
GSA-1142	3090-0080
GSA-1364	3090-0086
GSA-1678	3090-0027
GSA-2419	9000-0102
570.802(c)	3090-0086

3. Section 501.170-1 is revised to read as follows:

501.170-1 GSA orders and handbooks.

Internal agency guidance, as described in FAR 1.301(a)(2), must be issued by heads of contracting activities in the form of a GSA order or handbook. GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. Policies and procedures for issuing GSA orders and handbooks are in the HB, Writing GSA Internal Directives (OAD P 1832.3A).

4. Paragraph (h)(1)(ii) and (h)(1)(v) of section 501.603-70 are revised to read as follows:

501.603-70 Contracting officer warrant program (COWP).

* * *

(h) * * *

(i) * * *

(ii) *Basic level* (Does not apply to realty leasing and sales personnel)

(A) Small Purchases/Schedule Contracts—40 hours;

(B) Basic Procurement or Introduction to Contracting—40 hours;

(C) Contract Administration for Program Personnel—40 hours;

(Applicable to Buildings Managers Only);

(D) Basic Fleet Management Procurement—40 hours (*Only course required for Fleet Managers*).

* * *

(v) *Senior level (over \$100,000)*. (Does not apply to realty leasing and sales personnel)

(A) Executive Seminar in

Acquisition—24-40 hours;

(B) Advanced Contract

Administration—40 hours.

* * *

PART 514—SEALED BIDDING

5. Section 514.406-3 is revised to read as follows:

514.406-3 Other mistakes disclosed before award.

(a) *Delegations of authority by head of the agency*. In accordance with FAR 14.406-3(e), the contracting directors (see 502.101) are authorized, without power of redelegation, to make the determinations regarding corrections and/or withdrawals treated in FAR 14.406-3 (a), (b), and (c), and to make the corollary determinations not to permit withdrawal or correction for reasons indicated in FAR 14.406-3(d).

(b) *Format for determinations*.

Determinations under FAR 14.406-3 must be prepared in the following format.

Findings and Administrative Determination Alleged Mistake in Bid ("Prior to Award" or "After Award")

By

(Name of Bidder)

(IFB No.)

Pursuant to Federal Acquisition Regulation 14.406 and General Services Administration Acquisition Regulation 514.406, I hereby make the following findings:

Findings

(List in chronological order the information required by FAR 14.406, including a numerical list of exhibits)

Determination

Based on the above findings, I hereby determine in accordance with FAR (14.406-3 (a) or (b), (c), (d), (g) or 14.406-4) that (include an appropriate statement indicating the determination to permit withdrawal, correction, etc.).

Contracting Officer (For determinations under FAR 14.406-3(g)(5) or 14.406-4)

Date

or

Contracting Director (For determinations under FAR 14.406-3 (a), (b), (c) or (d))

Date

I reviewed the above case as to form, technical accuracy of the proposed determination, and the general accuracy of the supporting evidence and approve it as to legal sufficiency.

Assigned Counsel

Date

(c) *Legal review and approval*. Assigned counsel must approve determinations by the contracting director and contracting officer regarding mistakes in bid.

PART 532—CONTRACT FINANCING

532.502-3 [Removed]

6. Section 532.502-3 is removed.

7. The clause date and paragraph (b) of section 552.223-72 are revised to read as follows:

552.223-72 Nonconforming Hazardous Materials.

* * *

Nonconforming Hazardous Materials (MAR 1992)

* * *

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

* * *

552.232-74 [Removed]

8. Section 552.232-74 is removed.

Dated: April 13, 1992.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-9313 Filed 4-21-92; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Sedum integrifolium* ssp. *leedyi* (Leedy's

roseroot) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This rare inhabitant of algal talus cliffs occurs in only six locations (four sites in Minnesota and two sites in New York). The species is threatened by the rarity of its fragile and unique "cliff-side" habitat. This action will implement Federal protection provided by the Act for Leedy's roseroot. Critical habitat is not being designated.

EFFECTIVE DATE: May 22, 1992.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Johnson, Chief, Division of Endangered Species (See ADDRESS section), at 612 725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Leedy's roseroot, *Sedum integrifolium*, ssp. *leedyi* (Rosendahl et Moore) Clausen, was discovered by John L. Leedy in 1936 growing high on a limestone cliff along the Root River in Olmsted County, Minnesota (Clausen 1975). Leedy's roseroot is an isolated subspecies of a common western United States species. The range of the western subspecies and Leedy's roseroot do not overlap and they appear to have been isolated for a long time (approximately 10,000 years). Leedy's roseroot is more robust than most other *Sedum* species and it is characterized by tall floral stems. Its leaves are glaucous, oblong, and blue-green, averaging 30mm long, with irregularly dentate to entire margins. The plant is dioecious and the flowers are small, arranged in corymbose cymes. The petals are usually dark red with varying shades of yellowish white at the base. Some populations from Minnesota have petals that are dark red to the base and others have petals with greenish white bases. Observations at one Minnesota site (Wayne Ostlie, The Nature Conservancy, Iowa Chapter, *in litt.*, 1991) reveal that entire flower heads are sometimes yellow or green/yellow and occur with red flowered plants. Leedy's roseroot plants at another Minnesota location have been noted to have orange flower heads (Frest 1986). Some plants in New York have petals with yellow or greenish yellow at the base. The subspecies has a thick, scaly rhizome that is usually conspicuous in the crevices of rock cliffs where it grows

(Rosendahl and Moore 1947; Coffin and Pfannmuller 1988).

Leedy's roseroot grows on cliffs that have cold water dripping into the soil in Minnesota (limestone cliffs with bands of bentonite) and on limestone and shale cliffs in New York. The plant is limited to those areas on the cliffs where ground water seeps through the cracks in the rock. As a result, the local environment remains cool and wet throughout the summer, a condition probably similar to the climate of the last ice age. Leedy's roseroot is believed to be a remnant of the Pleistocene flora and it may have once ranged across most of the continent before the last period of glaciation (Coffin and Pfannmuller 1988).

Leedy's roseroot was added to the Plant Notice of Review in 1990 as a Category 2 species. Receipt of subsequent additional information indicates that the species warrants the protection of the Act because of its rarity and threats of habitat alteration. At present, it is known to occur in only six sites; five of these sites are viable. Four locations occur in Minnesota and two in New York. In Minnesota, the population at each site contains 1000 to 3000 individuals and occupies over 100 yards of cliff face. The four Minnesota locations include Deer Creek and Bear Creek (in Fillmore County), Simpson Cliff and the Whitewater Wildlife Management Area (in Olmsted County) (Ostlie, *in litt.*, 1988, Coffin and Pfannmuller 1988, Refsnider, pers. comm.). The New York population on the western edge of Seneca Lake, with approximately 10,000 individuals in an area 1 to 2 miles long (Rosendahl and Moore 1947). A population count in 1991 by the New York Natural Heritage Program staff indicates that this population may now number approximately 6,000-10,000 individual plants (Stephen Young, New York Heritage Botanist, pers. comm. 1991). A single robust individual plant occurs at Watkins Glen, but is thought to have been introduced (Clausen 1975).

Because of its unique habitat, the subspecies is often associated with other globally rare and endangered species. For example, several species of rare landsnails are often found in conjunction with Leedy's roseroot including *Novisuccinea* ssp. *A* and *N.* ssp., and *Vertigo hubrichti*. In addition, several rare plants are known to occur at the Minnesota sites including *Draba arabisans*, *Arabis laevigata* (smooth rock cress), and *Poa wolfii* (Wolf's spear grass) (Ostlie *in litt.*, 1988).

Summary of comments and Recommendations

In the June 18, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the *Ithaca Journal* (Ithaca, New York) on July 23, 1991, the *Watkins Review and Express* (Watkins Glen, New York) on July 24, 1991, and the *Post-Bulletin* (Rochester, Minnesota) on July 20, 1991. Several New York landowners responded via telephone and were provided information that explained the listing process. New York Congressman Alfonse D'Amato's office called in response to an inquiry from a constituent. A letter was sent to the Congressman's office explaining the status of *Sedum integrifolium* ssp. *leedyi* and how Federal and state rare plant laws would affect landowners. Eleven written comments were received from the following and are discussed below: the Minnesota Department of Natural Resources, the Minnesota Department of Agriculture, the Olmsted County Minnesota Planning Department, the Minnesota Farm Bureau Federation, six private individuals (five of whom are landowners), and the Iowa Chapter of The Nature Conservancy. Comments supporting the proposal were received from the Minnesota Department of Natural Resources, The Iowa Nature Conservancy, and one New York landowner. Six commenters offered additional information and thoughts about the species but did not take a position on the listing. Two private individuals opposed the action and raised the following issues:

Issue 1

Although rare, the species has survived since the ice age, adapted to current conditions, and does not appear to have difficulty in surviving. Why protect the plant? The Fish and Wildlife Service should spend time doing something about the zebra mussel.

Service response

The Endangered Species Act of 1973, as amended, requires that the Service take actions necessary to protect the ecosystems upon which endangered and threatened species depend and recover them to the point where protection of the Act is no longer necessary. Although Leedy's roseroot has survived since the

last ice age and has adapted to current conditions, its continued survival is threatened by habitat loss and degradation. Based on the best biological data available for Leedy's roseroot, the Service believes it is prudent to place the species under the protection of the Act. This action will enable the Service, state conservation agencies, interested individuals, and private organizations to initiate actions to prevent further decline of the species and chart a course to recovery. This is particularly important, since we are at a stage with this species where its survival can be assured with some specific protection actions. Alerting landowners and the public to the biology of the species and the need for habitat protection are some of the initial actions.

The Service has begun to address the impacts of the zebra mussel on native freshwater mussel species by evaluating the effects of chemicals proposed for zebra mussel control on non-target organisms. We have also identified the need for baseline information on various physiological and biochemical characteristics of native mussels in various river systems before zebra mussels become established (Diane Waller, Aquatic Biologist, Fish and Wildlife Service, *in litt.* 1991).

Issue 2

Residential development along Seneca Lake (New York) is not proceeding at a pace with other areas. Current New York State watershed regulations and rare species legislation offer protection for Leedy's roseroot, and citizens are "environmentally aware," so why are we spending time on this?

Service response

The Service recognizes the importance of state and local legislation and other protection efforts to protect and recover rare species. Placing species under the protection of the Endangered Species Act of 1973, as amended, strengthens local protection positions and provides additional resources for the recovery of species. It is important to note that Leedy's roseroot is not restricted to New York, but occurs in Minnesota, where protection is not provided to the same degree. Placing this species under the protection of the Act insures protection and recovery range-wide. The Service will be in a position to devote resources for research and habitat protection.

Issue 3

If the Fish and Wildlife Service would search similar areas in Ohio, Tennessee, Kentucky, and Pennsylvania, we would

probably discover additional populations.

Service response

Extensive surveys have been conducted for this species, based on historical records; botanists have searched for rare plant species since early settlement times. Range-wide surveys within New York and Minnesota have been completed, and the Service believes the records for this species are complete. Status surveys were not conducted in areas outside of the species' historical range. The Service does not believe that additional surveys will reveal appreciably more occurrences of this species.

Issue 4

Shouldn't the Service attempt to stimulate interest for this plant as a commercial product, which would encourage people to plant the species as an addition to rock gardens?

Service Response

The purpose of the Act is to preserve ecosystems upon which endangered and threatened species depend and recover species to the point where they are no longer in danger of extinction. Affording coverage of the Act to a species is not for the purpose of utilizing them for commercial endeavors. Due to the plant's unique habitat needs it may not be feasible for the plant to be utilized for commercial product. The Service is not aware of any commercial interest in this species.

The Service has considered all eleven comments received and has incorporated them into this final rule as appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that *Sedum integrifolium* ssp. *leedyi* (Rosend. and Moore) Clausen should be classified as a threatened 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 an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) are as follows:

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

In Minnesota, ground water contamination and change are the greatest threat to this subspecies. Contamination of ground water is likely through filling or dumping in sink holes adjacent to the cliffs. Sink holes are highly vulnerable because they provide direct access to the ground water and are the main source of seepage on the cliffs. One of the largest sink holes behind Simpson Cliff in Minnesota has already been used for dumping.

In New York, the Glenora Cliff site is threatened by residential development along Seneca Lake. The uplands adjacent to the cliff are primarily wooded and the homes are being built away from the cliff edge along Glenora Road. However, many homeowners have built stairs down to the lake shore and some have cleared vegetation from the cliff to enhance their view of the lake. In some areas, trees have been cut and dumped over the cliff edge onto the areas where the roseroot grows. These changes can directly affect the plants, as well as affect the microhabitat of the area, which can make it less suitable for a roseroot population.

The use of agricultural pesticides in adjacent upland farmland (cropland in Minnesota and vineyards in New York) may directly affect the quality of the ground water. However, in Minnesota, if Leedy's roseroot is affected as a result of chemical use on adjacent agricultural lands, no violation will result as long as reasonable care was taken during the chemical application process. Road building and quarrying within karst formations of the Minnesota region pose additional threats. This type of disruption would affect the subsurface water flow in an area and change the ground water seepage at a cliff face. Since the plants require this seepage, any change in ground water flow could affect them. Residential development and alteration of the cliff-face and cliff-top habitat around Seneca Lake in New York could also affect ground water quality and flow.

Erosion of the cliffs is another major threat. The slopes are unstable and, in places, overlying vegetation sloughs off to leave behind bare talus and soil. Natural erosion and rock slides often result in the loss of individual plants. In 1990, runoff from heavy rains dislodged many individual plants from the cliff face at Deer Creek in Minnesota. Uncontrolled cropland runoff has cut gullies into at least one of the sites in Minnesota. Grazing is a threat at one

Minnesota site, especially where the cliff gives way to a more gentle slope where Leedy's roseroot plants that may have been dislodged from higher elevations have again taken root. The talus slope below the Deer Creek cliff in Minnesota was extensively damaged by grazing in 1990. The grazing completely extirpated another rare plant population, *Chrysosplenium iowense*, from the site. Logging in the hardwood forests above some of the Minnesota sites may cause problems with erosion in the future (Coffin and Pfannmuller 1988, Ostlie 1988).

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

Commercial trade in this species is not known to occur. It seems unlikely that commercial trade will develop because the species is difficult to propagate or cultivate.

C. Disease or Predation

None that is known to affect this taxon.

D. The Inadequacy of Existing Regulatory Mechanisms

Sedum integrifolium ssp. *leedyi* is legally protected in New York, where it is listed as endangered. State law prohibits removal or destruction of the plant without permission of the landowner. The largest population at Seneca Lake in New York is privately owned. A one-acre parcel of land containing Leedy's roseroot along 289 feet of Seneca Lake is legally protected by the Finger Lakes Land Trust with a conservation easement through The Nature Conservancy. The subspecies is listed as endangered in the State of Minnesota where the state Endangered Species Act prohibits the taking, transport, or sale of any endangered or threatened plant or animal (or parts thereof). However, the Minnesota law has numerous exceptions that weaken its coverage in agricultural areas. Three of the four areas in Minnesota with Leedy's roseroot are in agricultural areas and are owned privately, and the fourth site is owned and protected by the State of Minnesota (plans are needed for the specific protection of Leedy's roseroot at this site). Two of the privately-owned sites have been registered in the Minnesota Registry of Natural Areas with The Nature Conservancy, but the registry does not confer legally binding protection. The Federal Endangered Species Act offers possibilities for additional protection of this taxon through section 6 cooperation between the states and the Service and

through section 7 (interagency cooperation) requirements.

E. Other Natural or Manmade Factors Affecting its Continued Existence

In addition to the dangers of development, ground water contamination, erosion, and grazing, the subspecies is highly vulnerable because the areas where it is located are isolated, disjunct, few in number, and, for the most part, they are privately owned and vulnerable. It is unlikely that more populations will be found in Minnesota because extensive surveys of approximately 400 algalic slopes have been undertaken during the last 10 years with only one new location for Leedy's roseroot found in 1989.

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 *Sedum integrifolium* ssp. *leedyi* as threatened.

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 this species at this time. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). The limited number of populations and individuals of Leedy's roseroot make this plant vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass laws. Such provisions are difficult to enforce. Even though this species has not proven to be easily cultivated, collectors might be attracted to the locale of known populations by the publication of maps and other specific location information. One of the landowners who commented urged us not to draw attention to the plants' location, because increased activity would affect the cliff ecosystem. The cliffs and slopes where these populations are located are unstable and trespass could increase erosion at the sites. No benefit from critical habitat

designation has been identified that outweighs the threat of trespass and collection. The principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through Section 7 consultation procedures. The Service finds that designation of critical habitat is not presently prudent for this species.

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. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below. The Minnesota Department of Resources Natural Heritage program continues an ongoing field inventory to gather biological data and distributional records for this species. Several private landowners in New York are attempting to preserve the wooded uplands above the shores of Seneca Lake in order to reduce the chance for groundwater contamination. The Olmsted County General Land Use Plan addresses the preservation of "open space" that includes areas around two Leedy's roseroot sites in that county. The county has also adopted a Comprehensive Water Management Plan that should provide additional protection against groundwater contamination.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) 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 destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that

activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 for threatened species set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale, this species in interstate or foreign commerce, or to remove and reduce the possession of the species 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 the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass laws. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species 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 3507, Arlington, Virginia 22203, telephone (703/358-2093).

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

- Clausen, R.T. 1975. *Sedum* of North America north of the Mexican Plateau. Cornell University Press, Ithaca.
- Coffin, B. and L. Pfannmuller (Ed.s). 1988. Minnesota's endangered flora and fauna. University of Minnesota Press, Minneapolis, MN. 474 pp.
- Frest, T.J. 1986. Final Report: Minnesota "Succinea chittenangoensis" Survey. Report for U.S. Fish and Wildlife Service. 27 pp.
- Ostlie, W. 1988. Simpson Maderitic Cliffs: Preserve Design. Report for The Nature Conservancy, Minnesota Field Office.
- _____. 1988. Bear Creek Maderitic Cliff: Preserve Design. Report for The Nature Conservancy, Minnesota Field Office.

_____. 1988. Deer Creek Maderitic Cliff: Preserve Design. Report for The Nature Conservancy, Minnesota Field Office.

Rosendahl, C.O. and J.W. Moore. 1947. A new variety of *Sedum rosea* from southeastern Minnesota and additional notes on the flora of the region. *Rhodora* 49: 197-202.

Author

The primary author of this final rule is William F. Harrison, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under Crassulaceae, 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					
Crassulaceae—Stone Family	Crop					
<i>Sedum integrifolium</i> ssp. <i>leedyi</i>	Leedy's roseroot	U.S.A. (MN, NY)DT	460	N/A	N/A	

(Final: *Sedum integrifolium* ssp. *leedyi* (Rosend. and Moore) Clausen, Leedy's roseroot—Threatened).

Dated: April 7, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-9174 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 910647-2043]

Endangered and Threatened Species; Threatened Status for Snake River Spring/Summer Chinook Salmon, Threatened Status for Snake River Fall Chinook Salmon

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

ACTION: Final rule.

SUMMARY: NMFS has determined that Snake River spring/summer chinook

salmon (*Oncorhynchus tshawytscha*) and Snake River fall chinook salmon are "species" under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (ESA), and should be listed as threatened. Snake River spring/summer chinook salmon have declined to low numbers and are dispersed over a large, complex river system. Snake River fall chinook salmon have substantially declined in abundance and are currently limited to a fraction of their former range. Hydropower development, water withdrawal and diversions, water storage, harvest, and inadequate regulatory mechanisms are factors contributing to the decline of these species and represent continued threats to their existence.

In a separate rulemaking, the U.S. Fish and Wildlife Service (FWS), Department of the Interior, will add the Snake River spring/summer chinook salmon and the Snake River fall chinook salmon to the U.S. List of Endangered and Threatened Wildlife.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT:

Rob Jones, NMFS, Protected Species Program, Environmental and Technical Services Division, 911 NE 11th Avenue, room 620, Portland, OR 97232, telephone (503) 230-5429 or FTS-429-5429, or Patricia Montano, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1990, NMFS received petitions from Oregon Trout, with co-petitioners Oregon Natural Resources Council, the Northwest Environmental Defense Center, American Rivers, and the Idaho and Oregon Chapters of American Fisheries Society, to list Snake River spring chinook salmon, Snake River summer chinook salmon and Snake River fall chinook salmon under the ESA. NMFS published a notice on September 11, 1990 (55 FR 37342), announcing that the petitions presented substantial scientific information indicating that listings may be warranted and initiated status reviews by requesting information from the public.

NMFS prepared the following technical papers: Status Reviews for Snake River Spring and Summer Chinook Salmon (Matthews and Waples 1991) and for Snake River Fall Chinook Salmon (Waples, Jones, Beckman, and Swan 1991); Supplements to the Notices of Determination (factors reports) for Snake River Spring/Summer Chinook Salmon Under the Endangered Species Act (ETSD 1991) and for Snake River

Fall Chinook Salmon Under the Endangered Species Act (ETSD 1991). NMFS published proposed rules (June 27, 1991; 56 FR 29542 and 29547) for listing Snake River spring/summer chinook salmon and Snake River fall chinook salmon as threatened species and requested comments. These final rules are based on the status reviews, factors reports, and on comments received.

Summary of Comments

NMFS received 122 comments on the proposed rule for the Snake River spring/summer chinook salmon, and 119 comments on the proposed rule for Snake River fall chinook salmon. NMFS considered all comments received, including testimony from four public hearings on the proposed rules. The majority of comments relevant to listing determinations under the ESA asserted that Snake River spring and summer chinook salmon are separate species under the ESA, and that Snake River fall chinook salmon should be listed as endangered rather than threatened. Many commenters provided information pertaining to research needs, critical habitat and recovery planning. Although this information may be useful in the development of any recovery plan, it will not be addressed here. Information pertinent to each listing decision has been incorporated here. A summary of major comments relevant to the listing determinations are presented below.

A. General Comments

Some commenters opposed the NMFS interim policy for defining populations of Pacific salmon as "species" under the ESA. Others supported the policy. Some stated that species determinations should afford greater consideration to life history characteristics and the ecological significance of different population units. NMFS considered and addressed these comments in publishing its final policy on applying the definition of "species" under the ESA to Pacific salmon (November 20, 1991; 56 FR 58612). Further guidance on the application of this policy is contained in the NMFS paper "Pacific Salmon and the Definition of 'Species' under the Endangered Species Act" (Waples *In press*), which is available upon request (see FOR FURTHER INFORMATION CONTACT).

B. Consideration of Spring and Summer Chinook Salmon as a Single Species

Some commenters supported the determination to consider Snake River spring and summer chinook salmon a single "species" under the ESA. Others

stated that Snake River spring and summer chinook salmon should each be considered a species for one or more of the following reasons:

- (1) Each is managed as a separate unit;
- (2) Apparent genetic similarities (based on current technology) do not prove that important adaptive differences do not exist;
- (3) Life history characteristics differ between the two forms; and
- (4) Sufficient data are unavailable to consider them a single species.

Distinct populations under the ESA may correspond to existing management units, but this will not always be the case. To the extent that political, economic, practical, or other nonbiological considerations affect the delineation of management units, such units may differ from those the ESA is intended to conserve. NMFS agrees that the failure to find genetic differences using protein electrophoresis does not prove adaptive differences do not exist. However, if available genetic techniques fail to distinguish distinct populations, then positive evidence to support population distinctness must be found elsewhere. This result places a greater burden of proof on other evidence.

Differences in life history characteristics between Snake River spring and summer chinook salmon are not as definitive as some commenters suggest. Collectively, the two forms use a diversity of run-timing and life history strategies, but the distribution of such characteristics is not discrete between the two forms. Furthermore, local biologists often cannot agree on which type is in a given stream; for some streams, classification of fish, as spring/summer, spring or summer, remains uncertain. Some streams originally thought to have spring-run fish (e.g., the Imnaha River) are now considered to have summer or spring/summer chinook salmon. Thus, even if NMFS were to recognize the two forms as separate evolutionarily significant units (ESUs), the demarcations of the ESUs would be uncertain. Given this uncertainty, NMFS believes that the most biologically sound approach is to afford protection to the entire spectrum of spring/summer life history forms as a single ESU, at the same time recognizing the importance of conserving the diversity within the ESU (in run-timing, life history characteristics, ecological and geographical representation, etc.).

Several commenters stated that a self-sustaining population of spring chinook salmon exists in the Clearwater River drainage, a subbasin of the Snake River, and should be included in the ESU.

Based on available information, it appears that for the period 1927 through 1940, indigenous chinook salmon populations were precluded from escaping into the Clearwater River by Lewiston Dam. Subsequent efforts to restore these populations included the transfer of eggs from the Salmon River and massive outplants of juveniles from hatcheries throughout the Columbia River Basin. NMFS does not consider fish of mixed nonnative origin part of the ESU for Snake River spring/summer chinook salmon (Matthews and Waples 1991).

C. Application of Models to Determine Species Status

Some commenters stated that the model used in defining threatened or endangered status for spring/summer and fall chinook salmon was inappropriate. Others felt the model was applicable but need refinement. Still others stated that the model was accurate and used appropriately. NMFS believes that, because of the difficulty in modelling the complex life history patterns of Pacific salmon, it is inappropriate at the present time to place complete reliance on any model currently available. NMFS believes that model results should be used together with all other relevant information and factors in reaching determinations regarding the listing or delisting of species under the ESA.

D. Status of Snake River Spring/Summer Chinook Salmon

Some commenters stated that Snake River spring/summer chinook salmon should be listed as endangered. Others supported a threatened listing. NMFS has reviewed available scientific information, including 1991 returns to the Snake River and spawning ground observations, and has determined that Snake River spring/summer chinook salmon should be listed as threatened.

E. Status of Fall Chinook Salmon

Many commenters stated that Snake River fall chinook salmon should be listed as endangered rather than threatened. The threatened species designation in the proposed rule was based on an assessment of the best available scientific and commercial information, taking account of efforts to protect the species. In making its final determination, NMFS considered the 1991 estimated escapement of 318 wild, adult fall chinook salmon above Lower Granite Dam. This represents a considerable increase over the 1990 estimated escapement of 78 adults. Further, starting in 1991, all hatchery-produced fall chinook from the Snake

and Umatilla Rivers were tagged in order to separate adult hatchery and wild fish at Snake River dams. Tagged hatchery fish will be prevented from ascending further upstream, while wild fish will be allowed to proceed. This measure will be significant in reducing any introgression of the Snake River gene pool with Columbia and Snake River hatchery-produced fall chinook salmon. Furthermore, at Lyons Ferry Fish Hatchery, the practice of taking wild fish for broodstock has been stopped. Despite the need for caution in using the most recent year's figure in determining a trend, this increase approaching previous escapement levels typical of the 1980s may be attributable, at least in part, to the protective measures already undertaken. Consequently, NMFS is issuing a final determination to list the Snake River fall chinook salmon as threatened under the ESA.

F. Juvenile Migration

Several commenters stated that hydropower construction and operation should be described as the primary factor for the decline of Snake River spring/summer and fall chinook salmon. Others thought the hydropower system was attributed excessive responsibility for these declines. It was not NMFS' intention to rank the various factors for decline. Rather, the proposed rule attempted to identify those factors responsible for the decline of these species.

One commenter stated that hydropower dams have not contributed to the delay of juvenile fish migrants. NMFS does not agree. There is ample evidence that development and operation of the hydroelectric system has reduced juvenile fish travel speed and survival (CBFWA 1991; Raymond 1979).

Commenters generally agreed that flows in the Snake River at Lower Granite Dam up to 85 thousand cubic feet per second (kcfs) (2.41 thousand cubic meters per second (kcms)) materially improve the survival of juvenile fish migrating during the spring. Most commenters also agreed that there appears to be additional survival benefits above 85 kcfs (2.41 kcms), but commenters differed markedly on the significance of the additional benefit. One commenter suggested that flows in excess of 85 kcfs (2.41 kcms) in the Snake River and 175–180 kcfs (4.96–5.10 kcms) downstream in the Columbia River are not needed to assist juvenile fish migration. Other commenters supported the need for flows up to 140 kcfs (3.96 kcms) in the Snake River and 300 kcfs (8.50 kcms) in the lower

Columbia River. NMFS believes there is a relationship between increased flows, decreased fish travel time, and increased survival, but the incremental improvement in survival would be reduced at the upper end of the flow range.

One commenter stated that photoperiod and water temperature are the primary factors controlling the onset of juvenile salmon smoltification and migration to the sea. Raymond (1979) reported that juvenile migrations were related more closely to sudden rises in water temperature than to an increase in river discharge. Hoar (1988) and Mains and Smith (1964) note that factors such as photoperiod and water temperature do play a significant role in smoltification, but also indicate a stimulus such as a sudden increase in river discharge is necessary to initiate downstream migration. A discussion of the biology and physiology of factors influencing fish migratory behavior is provided in CBFWA (1991).

One commenter indicated that water is not always available to fulfill system operation objectives for hydropower production, flood control, etc., in the Snake and Columbia Rivers. If water in excess of these objectives exists, then the water budget is satisfied. NMFS believes that the water budget, as planned by the NWPPC, has not been implemented in the manner it was intended. Other system operations are often addressed at the expense of adverse limitations placed on the water budget.

One commenter noted that juvenile fish survival estimates for different spill levels at Lower Monumental Dam on the Snake River as presented in the factors report for Snake River fall chinook salmon were incorrect. NMFS concurs with the commenter. Juvenile fish survival at a facility lacking a screened bypass (Lower Monumental Dam) is estimated to have increased from a prespill level of 85 percent up to 91 percent (with spill), indicating a 6-percent increase. At projects with an ice and trash sluiceway, survival is estimated to have increased from a prespill level of 90 percent up to 91–92 percent (with spill).

Some commenters stated that the quantity of water diverted from the river by the Columbia Basin Project (CBP) was insignificant and did not impact fish. NMFS notes that the volume of water diverted by the CBP (2.3 million acre feet (MAF)) is two-thirds of the Columbia River water budget and is nearly twice the volume of the Snake River water budget. NMFS does not concur that CBP diversion is

insignificant, and believes that such diversion could have significant negative impacts upon the downstream migration of Snake River spring/summer and fall chinook salmon. Other commenters expressed concern about perceived impacts on fishery resources resulting from the expansion of the CBP. NMFS believes that existing water withdrawals in the Columbia River Basin impose impacts on Snake River spring/summer and fall chinook salmon. Proposed expansions of such withdrawals pose additional impacts.

One commenter noted that upstream water use and storage in Idaho had little effect on juvenile migration prior to construction of the mainstem Snake River dams. The factors report only summarized existing information on water storage and withdrawals. The significance of water storage and withdrawals relative to other factors has yet to be determined, and will be reviewed further during recovery planning and through consultations on specific Federal actions that may affect listed populations.

Some commenters were critical of the ranges and estimates of specific mortality factors presented by NMFS. NMFS is aware that other estimates exist for mortality of juvenile and adult fish migrating through the mainstream Columbia and Lower Snake River dams. NMFS believes that the best available scientific information has been considered in these determinations. All data will again be considered during critical habitat determinations, consultations, and recovery planning.

Several commenters questioned the effectiveness of juvenile bypass systems. While NMFS believes that bypass systems have great potential for reducing juvenile mortality at dams, NMFS also recognizes that ongoing research and development programs are necessary before their full potential can be realized. Concluding that bypasses are detrimental based on the preliminary results of one study is inappropriate.

Some commenters noted that predation was not mentioned as a specific cause of decline. Predation as a factor in the decline of Snake River spring/summer and fall chinook salmon was addressed in the proposed rule and factors report for each species. Substantial increases in predator abundance have been documented within the range of these fish. Although available information indicates that predators consume or injure these species, the extent to which predation is a factor causing the decline of Snake River spring/summer and fall chinook salmon is unknown.

Some commenters stated that increased residence time had little effect on the level of predation. Recent research (Poe and Rieman 1988, Vigg and Burley 1989) indicates that the consumption rate of predators increases with water temperature. Water temperature typically increases rapidly during the juvenile migration season, with fall chinook salmon outmigrants facing the highest temperatures. Therefore, as fish take longer to move through the migration route, they are exposed to predators for a longer duration and are subjected to increased predation rates as temperature rise.

G. Harvest of Spring/Summer Chinook Salmon

Some commenters felt that the ocean harvest of Snake River spring/summer chinook salmon was a significant factor in the decline of this population. Another commenter stated that harvest information was only available for coded wire tagged fish produced in hatcheries, and that hatchery fish were not representative of the wild population. Several commenters stated that the combination of low survival rates to recruitment and low sampling rates of fisheries resulted in inadequate estimates of ocean harvest. NMFS encourages efforts to provide additional information on any harvest of Snake River spring/summer chinook salmon. Based on the best available information (see factors report), it appears that relatively small numbers of these fish are harvested in ocean fisheries.

H. Harvest of Fall Chinook Salmon

Several commenters responded that the proposed rule should have clearly indicated that historical harvest rates did contribute to the decline of Snake River fall chinook salmon and that current harvest rates are higher than the population can sustain. NMFS previously concluded (see factors report) that Snake River fall chinook salmon historically were capable of sustaining high harvest rates, but following the degradation of the Snake and Columbia River ecosystems, harvest rates may have contributed to the further decline of the population. Clearly, previous harvest rates were high and could not be sustained in conjunction with other factors affecting the population.

Additional data received since the publication of the factors report allows for the calculation of the simple total harvest rate for Snake River fall chinook salmon (total harvest rate not including inter-dam loss), at an average of 69 percent (based on returns from 1984 and 1985 broods). This harvest rate may also

be higher than the population can sustain.

I. Scientific Utilization of Spring/Summer and Fall Chinook Salmon

One commenter stated that NMFS reporting of the scientific utilization of Snake River spring/summer and fall chinook salmon may have been incorrect. In response to this comment, NMFS has determined that the factors report should have read "the number of spring, summer, and fall chinook combined, that were handled at the five Snake River sites in 1988, 1989 and 1990, was 208,175; 348,256; and 199,814, respectively."

J. Artificial Propagation as a Factor for Decline of Spring/Summer Chinook Salmon

Some commenters stated that artificial propagation has imposed selection effects on wild populations by broodstock collection practices. Others indicated that NMFS did not adequately describe the role of hatchery practices as a factor in the decline of Snake River spring/summer chinook salmon. Large-scale hatchery operations began only after Snake River spring/summer chinook salmon populations had reached record low numbers. NMFS believes, however, that hatchery operations have contributed to the further decline of wild Snake River spring/summer chinook salmon through the taking of fish for hatchery broodstock, behavioral and genetic interaction, competition, predation, and the spread of disease. Some commenters stated that artificial propagation resulted in the over-harvest of wild fish that mingle with more abundant hatchery returns. NMFS acknowledges that historical harvest rates contributed to the species' decline, but harvest rates since spring/summer chinook hatcheries began operation have been relatively low. There is no evidence to indicate that mixed stock fisheries based on harvestable chinook salmon produced in hatcheries have resulted in the over-harvest of wild Snake River spring/summer chinook salmon.

K. Artificial Propagation as a Factor for Decline of Fall Chinook Salmon

Some commenters stated that the proposed rule did not describe in sufficient detail the Snake River fall chinook salmon egg bank program. The proposed rule itself summarized the results of this program in the section "Summary of Factors Affecting the Species." Extensive discussion of the program was provided in the factors report and status review.

Some commenters stated that the production of upriver fall chinook salmon in Columbia River hatcheries results in the overharvest of Snake River fall chinook salmon. Excessive harvest of wild Snake River fall chinook salmon may occur when these fish mingle with the more abundant hatchery and wild fall chinook salmon returning to the upper Columbia River. NMFS recognizes this potential for overharvest, and included harvest management as an available conservation measure in the proposed determination to list Snake River fall chinook salmon.

Some commenters stated that the collection of wild Snake River fall chinook salmon for hatchery broodstock was a factor in the species' decline. Other commenters stated that efforts to maintain the integrity of Snake River fall chinook salmon at Lyons Ferry Hatchery were being compromised by the use of fish from other locations as broodstock. As stated in the factors report, the collection of Snake River fall chinook salmon for hatchery broodstock (egg bank program) only began following the decline of the population to very low numbers. NMFS noted in the proposed rule that hatchery fall chinook salmon have strayed into the Snake River in increasing numbers, resulting in some introgression of upper Columbia River genes into Lyons Ferry Hatchery fall chinook salmon. The Washington State Department of Fisheries (WDF) has implemented measures to minimize potential impacts of straying on Lyons Ferry Hatchery broodstock (WDF 1991a). Only progeny from confirmed Lyons Ferry Hatchery adults were used for broodstock purposes in 1990 and 1991.

One commenter stated that large numbers of chinook salmon released from lower Columbia River hatcheries compete with Snake River fall chinook salmon for food and habitat in the Columbia River estuary, and that this practice is a factor in the species' decline. NMFS concurs that competition for limited food and habitat may result from large numbers of fall chinook salmon released from hatcheries annually and, therefore, contribute further to the decline of wild Snake River fall chinook salmon.

One commenter stated that the transmission of disease from hatchery-released fish was a factor in the decline of the wild Snake River fall chinook salmon. NMFS could find no evidence of this.

L. Fish Transportation

Commenters expressed conflicting views on whether the Juvenile Fish Transportation Program (bypassing

mainstem Snake and Columbia River hydroelectric facilities via barges and trucking) was beneficial to Snake River spring/summer and fall chinook salmon. Some commenters felt that such benefits were understated or ignored. Others felt that transportation may provide negative or at least uncertain benefits and should be reevaluated.

NMFS believes that available biological information indicates there is substantial benefit to transporting Snake River spring/summer and fall chinook salmon. For Snake River spring/summer chinook salmon and upper Columbia River fall chinook salmon, there is substantial evidence that transported fish return as adults at a higher rate than fish allowed to migrate naturally through adverse in-river conditions (COE 1985; Matthews, Harmon, Achord, Johnson and Kubin 1990).

Some commenters suggested that juvenile chinook be allowed to migrate naturally in-river to minimize handling and stress of passage through juvenile collection facilities. In past years when daily average flows in the Snake River exceeded 100 kcfs (2.83 kcms), juvenile chinook salmon collected at Little Goose Dam on the Snake River were bypassed back to the river and allowed to migrate naturally. Juveniles collected at Lower Granite Dam were transported under all conditions.

A commenter stated that flow was irrelevant for many Snake River spring/summer chinook salmon "because most fish are collected at upriver dams and transported through the system." Average fish guidance efficiency for spring/summer chinook salmon at Snake River collector dams is approximately 50 to 70 percent per dam; therefore, 30 to 50 percent of those fish arriving at dams are not collected. Juveniles surviving direct and indirect turbine passage mortality migrate naturally, regardless of river flow condition.

M. Management by State and Federal Agencies

Some commenters stated that NMFS ignored mention of general mismanagement of fisheries by state and Federal agencies as a factor for decline of Snake River spring/summer and fall chinook salmon. The adequacy of existing regulatory mechanisms is summarized in this rule document (see Summary of Factors Affecting the Species), and discussed extensively in the factors reports.

Some commenters stated that decisions of Federal hydroelectric operators and regulators not to implement recommendations of fish and wildlife agencies were not factors

contributing to the decline of Snake River spring/summer chinook salmon. One commenter cited several instances to which "fish measures recommended by 'fish' entities" are still not adequate. The standard by which recommendations of fishery agencies have been judged inadequate in this comment is unclear. NMFS believes that discretionary decisions by Federal hydroelectric project operators and regulators have contributed to the decline of Snake River spring/summer chinook salmon.

N. Other Impacts to Habitat

Some commenters stated that habitat impacts resulting from livestock grazing, logging, road building, mining and irrigation withdrawals were understated. Others stated that the proposed rule placed too much emphasis on these actions as factors in the decline of each species. NMFS did not intend that the proposed rules establish relative responsibility of factors for decline of the species. NMFS has determined that Snake River spring/summer chinook salmon are a threatened species and Snake River fall chinook salmon are a threatened species because of these and other factors.

O. Available Conservation Measures

Commenters recommended implementation of a number of measures including: (1) Modifications to the juvenile fish transportation program; (2) shifting flood control responsibilities to provide water for downstream migrants; (3) Snake River reservoir drawdown; (4) alternative harvest management; (5) irrigation screening; (6) tagging of hatchery fish; and (7) various research activities to conserve Snake River spring/summer and fall chinook salmon. These measures and others will be addressed during section 7 consultations and recovery planning.

Consideration as "Species" Under the ESA

To consider the Snake River spring/summer and fall chinook salmon for listing, they must qualify as "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The NMFS final policy on how it will apply the ESA "species" definition in evaluating Pacific salmon was published on November 20, 1991 (56 FR 58612). A salmon population will be considered distinct, and hence a species under the ESA, if it represents an ESU of the biological species. The population must satisfy two criteria to

be considered an ESU: (1) It must be substantially reproductively isolated from other nonspecific population units; and (2) it must represent an important component in the evolutionary legacy of the biological species. Further guidance on the application of this policy is contained in the NMFS paper "Pacific Salmon and the Definition of 'Species' under the Endangered Species Act" (Waples In press).

Spring-, summer- and fall-run salmon have traditionally been considered separate runs based on differences in timing of adult returns to spawning areas. In determining whether Snake River spring, summer, and fall chinook salmon should be considered together or separately as species under the ESA, it is necessary to determine whether fish with different run-timing are reproductively isolated. Schreck *et al.* (1986) and Utter *et al.* (1989) suggest that spring, summer and fall-run chinook salmon probably do not represent separate lineages in the Pacific Northwest. They found that, in general, geographic proximity was a more important factor than run-timing in predicting similarities between stocks. This suggests that run-time differences may have evolved independently following colonization of a new area (Matthews and Waples 1991). However, in spite of this general pattern, there are pronounced genetic (Schreck *et al.* 1986; Utter *et al.* 1989) and life history (Matthews and Waples 1991) differences between fall chinook salmon and the other two forms (spring and summer chinook salmon) in the Snake River.

SNAKE RIVER SPRING/SUMMER CHINOOK SALMON AS A SPECIES

Even though some spring/summer chinook salmon populations appear to be substantially reproductively isolated, this isolation may result from geographical separation as much as temporal differences in spawn timing. Furthermore, reproductive isolation could be as strong (or stronger) between populations with similar run-timing from different drainages.

The key to understanding the evolutionary significance of spring and summer chinook salmon run-timing is the relationship between the two forms in streams where they occur together (Matthews and Waples 1991). Matthews and Waples (1991) discuss two hypotheses that could explain the presence of both forms in the same stream: (1) The two forms arose from a single colonization event by one of the forms, or (2) spring and summer-run fish are two independent evolutionary units, and the reason both forms are found in the same stream is that, in these cases,

two colonization events occurred. Presently, there is insufficient information to determine which of these hypotheses is true, or whether hypothesis 1 is true in some cases and hypothesis 2 is true in others.

Because of compelling evidence that Snake River spring/summer chinook salmon are reproductively isolated from fall chinook salmon, and considering the possibility of substantial levels of gene flow between the spring and summer chinook salmon forms in at least some localities, NMFS has determined that for the purposes of the ESA, Snake River spring/summer chinook salmon should be considered together as a single unit. This decision, however, does not imply that the two forms are not both important; the broad distribution of these fish with a spectrum of run and spawn timing is crucial to the long-term health and viability of Snake River chinook salmon.

To determine whether Snake River spring/summer chinook salmon consist of one or multiple units, the criteria of reproductive isolation and substantial contribution to ecological/genetic diversity of the biological species are important. The most compelling evidence of an anadromous salmon population's reproductive isolation is the characteristic of individuals to return to their natal streams to reproduce. This is particularly true for upriver populations, such as Snake River spring/summer chinook salmon (Chapman *et al.* 1991). These fish travel great distances (between 324 miles (522 km) and 900 miles (1450 km)) in fresh water to reach their natal streams. All available information suggests that if an adult spring or summer chinook salmon enters the Columbia River, it will likely spawn in its natal stream (Matthews and Waples 1991).

Available information also indicates that Snake River spring/summer chinook salmon are ecologically/genetically distinct. Recent studies (Schreck 1986; Waples *et al.* 1990) examining the genetic relationships among Columbia River Basin chinook salmon populations indicate that there is little, if any, genetic exchange between Snake River spring/summer chinook salmon and lower and mid-Columbia River spring chinook salmon and upper Columbia River summer chinook salmon (Matthews and Waples 1991). Ecologically, the Snake River drainage differs from the Coastal and Cascade Ranges by older, eroded mountains with high plateaus containing many small streams meandering through long meadows. Much of the area is composed of batholithic granite that is prone to

erosion, creating relatively turbid water with high alkalinity and pH in comparison to the Columbia River (Sylvester 1959, in Matthews and Waples 1991). The region is arid with warm summers, resulting in higher annual temperatures than in many other salmon production areas in the Pacific Northwest. In addition, the Salmon River alone once produced nearly half of the spring/summer chinook salmon returning to the Columbia River (Matthews and Waples 1991).

The fact that juvenile migrational behavior is the same for spring and summer chinook salmon in the Snake River, but different from those forms in the upper Columbia River, strongly implies ecological/genetic differences between the regions (Matthews and Waples 1991). The precision required to migrate great distances from different natal streams and tributaries and return with high fidelity and exact timing to start the next generation 1 to 3 years later speaks of biological entities that are highly adapted to their particular environments. Protein electrophoresis also shows clear differences between Snake River spring/summer chinook salmon and other chinook salmon populations in the Columbia River Basin (Matthews and Waples 1991).

SNAKE RIVER spring/summer chinook salmon as a group meet both criteria to be considered a "species" under the ESA; they are strongly isolated reproductively from other conspecific population units and they contribute substantially to the ecological/genetic diversity of the biological species. While more than one ESU may exist within the Snake River Basin, the data presently available are not sufficient to clearly demonstrate the existence of multiple ESUs, or to define their boundaries. Thus, NMFS believes that the Snake River spring/summer chinook should be considered as one ESU of the biological species *O. tshawytscha*. NMFS recognizes that there is evidence of important differences between some population segments within the Snake River Basin; therefore, NMFS emphasizes that the ESU's viability is strongly dependent on the continued existence of healthy populations distributed throughout the Snake River Basin. As more data become available, smaller ESUs within the Snake River ESU may be defined.

SNAKE RIVER FALL CHINOOK SALMON AS A SPECIES

Available evidence indicates that, through the early 1980s, Snake River fall chinook salmon met both criteria necessary to be an ESU: Substantial

reproductive isolation and ecological/genetic distinctness. In addition, the very low incidence of natural straying of upper Columbia River fall chinook salmon (McIssac and Quinn 1988) and consistent genetic differences between upper Columbia River and Snake River fall chinook salmon demonstrate significant, long-term reproductive isolation between these groups.

Available information indicates that Snake River fall chinook salmon satisfy the second criterion, which stipulates that a population must represent an important component in the evolutionary legacy of the biological species to be considered an ESU. Historically, the Columbia River system was the largest producer of chinook salmon in the world. Prior to 1960, the Snake River was the most important production area for fall chinook salmon in the Columbia River system (Bureau of Commercial Fisheries and Bureau of Sport Fisheries and Wildlife 1964). Unique ecological features of the Snake River Basin, characteristic freshwater habitats, and contrasting ocean distribution patterns and genetic differences (relative to upper Columbia River fall chinook salmon) are evidence of ecological/genetic distinctness and the importance of the Snake River fall chinook salmon in the legacy of the biological species.

Evidence of introgression of upper Columbia River genes into Lyons Ferry Hatchery, a facility developed with the intent of conserving the genetic integrity of Snake River fall chinook salmon, has prompted concern regarding the status of the Snake River fall chinook salmon ESU. However, because (1) Snake River fall chinook salmon represented an ESU prior to these straying events, (2) significant straying of hatchery-reared Upper Columbia River fall chinook salmon has occurred only within the last generation, and (3) direct evidence of genetic change in wild Snake River fall chinook salmon is lacking, NMFS concludes, based on the weight of existing information, that Snake River fall chinook salmon still represent an ESU.

Status of Snake River Spring/Summer Chinook Salmon

Historically, it is estimated that 44 percent of the combined Columbia River spring and summer chinook salmon returned to the Salmon River subbasin of the Snake River system (Fulton 1968). Matthews and Waples (1991) combined a number of estimates (Fulton 1968; Chapman 1986; CBFWA 1990) and concluded that in some years during the late 1800s, the Snake River produced in excess of 1.5 million adult spring/

summer chinook salmon. By the 1950s, the abundance of adult spring/summer chinook salmon had declined to an average of 125,000 per year (Fulton 1968). Since then, counts at Snake River dams have declined considerably, from an average at Ice Harbor Dam of 58,798 fish during 1962 through 1970, to a low of 11,855 in 1979. Counts gradually increased over the next 9 years, peaking at 42,184 in 1988. However, in 1989, 1990 and 1991, counts dropped to 21,244, 26,524 and 17,149 fish, respectively (FPC 1991). These numbers are illustrative of population trends, but are not indicative of wild fish abundance, because adult counts at dams since 1967 have been confounded by returns of hatchery-origin fish.

Matthews and Waples (1991) estimated the number of wild fish passing the uppermost Snake River dam (1968—Ice Harbor Dam; 1969—Lower Monumental Dam; 1970–74—Little Goose Dam; and 1975–90—Granite Dam), utilizing an expansion factor based on adult counts at the uppermost dam and redd counts in index areas prior to hatchery influence. Redd counts are available since 1957 from all Snake River index areas except the Grande Ronde River, where surveys began in 1964. Using this method, the estimated number of wild adult spring/summer chinook salmon passing over Lower Granite Dam averaged 9,674 fish from 1980 through 1990, with a low count of 3,343 fish in 1980 and a high count of 21,870 fish in 1988. The estimated wild adult return in 1991 was 8,457 (redd counts from IDFG, unpublished information).

SNAKE RIVER redd counts in index areas provide the best indicator of trends and the status of wild spring/summer chinook salmon. In 1957, over 13,000 redds were counted in index areas excluding the Grande Ronde River. By 1964, the number of redds was only 8,542, including counts in Grande Ronde River. Over the next 16 years, annual counts in all areas declined steadily, reaching a minimum of 620 redds in 1980. Annual counts increased gradually over the next 8 years, reaching a peak of 3,395 redds in 1988. However, in 1989, 1990 and 1991, counts dropped to 1,008, 1,224 and 1,184, respectively.

Factors relevant to the determination of whether a "species" is threatened or endangered include current and historical abundance, population trends, distribution of fish in space and time, other information indicative of the health of the population, existing and potential threats to the species, and those efforts, if any, being made to protect the species. Nearly 95 percent of

the total reduction in estimated abundance of Snake River spring/summer chinook salmon occurred prior to the mid-1900s. Over the last 30–40 years, the remaining population was further reduced. Currently, the abundance of these fish is approximately 0.5 percent of the estimated historical abundance. Furthermore, the 1991 redd count of (1,184) (index areas only) represents only 13.9 percent of the 1964 count (8,542).

Estimated escapement of wild spring/summer chinook salmon above Lower Granite Dam between 1980 and 1990 ranged from 3,343 to 21,870 fish. These fish are dispersed over a large and complex river system. In cases where significant population subdivision has occurred within the Snake River Basin, the abundance of some local populations may have declined to levels at which risks associated with inbreeding, difficulty of finding spawning mates, and other random factors are important considerations in determining the status of the spring/summer chinook salmon ESU.

There is some indication that returns of Snake River spring/summer chinook salmon may increase during the next several years. Jack (1-year ocean residence fish) returns is one of several methods used to forecast subsequent adult returns. In 1989, 2,451 Snake River spring/summer chinook salmon jacks were counted at Lower Granite Dam. The corresponding 1990 adult count was 22,048. The 1990 jack count was 352, followed by a 1991 adult count of 10,432. In 1991, 2,156 jacks returned to Lower Granite Dam. Improved jack returns in 1991 is one indication that adult returns may increase in 1992 and 1993.

Status of Snake River Fall Chinook Salmon

Historically, fall chinook salmon were widely distributed throughout the Snake River and many of its major tributaries from its confluence with the Columbia River near Pasco, Washington, upstream 615 miles (990 kilometers (km)) to Shoshone Falls, Idaho (Columbia Basin Interagency Committee 1957; Haas 1965; Fulton 1968; Van Hyning 1968; Lavier 1976). The most important spawning grounds for fall chinook salmon in the Snake River were between Huntington, Idaho (river mile (Rm) 328, river kilometer (Rkm) 527), and Auger Falls, Idaho (Rm 607, Rkm 977) Evermann 1896).

During the early 1900s, a weir was placed in the Snake River downstream of Swan Falls Dam near Ontario, Oregon, Rm 372, Rkm 599, to collect fall

chinook salmon broodstock. Although only a portion of the returning fish were intercepted, more than 20 million eggs (a minimum of 4,000 females) were taken in a single year (Parkhurst 1950). This provides some indication of the distribution and large number of fall chinook salmon migrating into the upper reaches of the Snake River during this period.

Fall chinook salmon production above Rm 456, Rkm 734, was terminated in 1901 by Swan Falls Dam, which obstructed the passage of returning adults (Parkhurst 1950). Snake River fall chinook salmon abundance remained relatively stable until 1950, but declined substantially thereafter. The estimated mean number of fall chinook salmon returning annually to the Snake River decreased from 72,000 between 1928 and 1949, to 29,000 from 1950 through 1959 (Irving and Bjornn 1981). In spite of this decline in abundance, the Snake River remained the most important production area for fall chinook salmon in the Columbia River Basin through the 1950s (Fulton 1968).

The distribution of Snake River fall chinook salmon has been dramatically reduced and now represents only a fraction of its former range. The construction of Brownlee, Rm 285, Rkm 459 (1958); Oxbow, Rm 273, Rkm 439 (1961); and Hells Canyon, Rm 247, Rkm 397 (1967) Dams inundated spawning habitat and prevented access to the primary production areas of Snake River fall chinook salmon when fish passage facilities at these projects proved to be inadequate (Van Hyning 1968). Snake River fall chinook salmon habitats were further reduced with the construction of Ice Harbor, Rm 10, Rkm 16 (1961); Lower Monumental, Rm 42, Rkm 67 (1969); Little Goose, Rm 70, Rkm 113 (1970); and Lower Granite, Rm 108, Rkm 173 (1975) Dams.

For Snake River fall chinook salmon, dam counts provide one indication of the population's recent abundance. Counts at the uppermost dam affording adult fish passage averaged 12,720 at Ice Harbor from 1969 through 1974, and 610 at Lower Granite from 1975 through 1980 (ODFW 1990; Corps unpublished). However, the escapement of wild Snake River chinook salmon must be less than these figures since fish leaving the Snake River to spawn elsewhere are not accounted for in dam counts. Efforts were initiated in 1990 to estimate the number of hatchery-reared fall chinook salmon (initial returns to the Snake River were in 1983) and wild Snake River fall chinook salmon returning to Lower Granite Dam. This methodology was used to estimate wild and hatchery

fall chinook salmon returns for the period 1983 through 1989, recognizing that site-specific straying rates were not calculable prior to 1990 (WDF 1991a). Estimates of wild Snake River fall chinook salmon escapement to Lower Granite Dam varied from 428 adults in 1983, to 295 in 1989, to 78 in 1990. Wild escapement in 1991 was estimated to be 318 (WDF 1991b).

Fall chinook salmon redds observed over the remaining 102 miles (165 km) of the Snake River available to fall chinook salmon for the period 1987 through 1991 were 66, 57, 58, 37, and 32 respectively (WDF 1991c).

Summary of Factors Affecting the Species

The ESA requires a determination whether a species is threatened or endangered because of any of the five factors identified in section 4(a)(1). These determinations are based on the factors reports for the Snake River spring/summer and fall chinook salmon, the proposed rules, and comments on the aforementioned documents. A brief description of these factors, for both species, follows.

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

Hydropower development has resulted in: Blockage and inundation of habitat; turbine-related mortality of juvenile fish; increased delay of juvenile migration through the Snake and Columbia Rivers; increased predation on juvenile salmon in reservoirs; and increased delay of adults on their way to spawning grounds. Water withdrawal and storage, irrigation diversions, siltation and pollution from sewage, farming, grazing, logging, and mining have also degraded the Snake River spring/summer and fall chinook salmon's habitat.

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

Historically, combined ocean and river harvest rates of Snake River spring/summer chinook salmon exceeded 80 and sometimes 90 percent (Ricker 1959). However, current ocean and river harvest levels have been greatly curtailed in the commercial, recreational, and Indian fisheries due to low escapements and efforts to protect these runs. The majority of current harvest occurs in the Columbia River net fisheries. Some harvest also occurs in Columbia River recreational fisheries (Berkson 1991). Columbia River fisheries directed toward other species can also

impact spring/summer chinook salmon (ODFW and WDF 1989).

The total exploitation rate for Lyons Ferry Hatchery fall chinook salmon, which are assumed to have the same distribution as wild Snake River fall chinook salmon, is estimated to be 69 percent (CRITFC 1991). These harvest rates may be higher than Snake River fall chinook salmon can sustain.

C. Disease or Predation

Both spring/summer and fall chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms; however, these organisms' impacts on Snake River spring/summer, and fall chinook salmon are largely unknown.

Predators, particularly northern squawfish, *Ptychocheilus oregonensis*, and avian predator populations have increased due to hydroelectric development that created ideal foraging areas. Numerous reservoirs provide preferred habitats, and turbulent conditions in turbines, dam bypasses, and spillways have increased predator success by stunning or disorienting passing juvenile salmon migrants.

Marine mammal numbers, especially harbor seals and California sea lions, are increasing on the West Coast and increases in predation by pinnipeds have been noted in all Northwest salmonid fisheries. For Snake River spring/summer chinook salmon, increased injuries attributable to marine mammals from a few percent annually to an average of 19.2 percent was noted at Lower Granite Dam in 1990 (Harmon 1991) and reported in the factors report. The observed incidence of such injury in 1991 declined to approximately 15 percent (Matthews personal communication). The extent to which predation is a factor causing the decline of spring/summer and fall chinook salmon is unknown.

D. Inadequacy of Existing Regulatory Mechanisms

A wide variety of Federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River. However, they have not prevented the decline of Snake River spring/summer and fall chinook salmon. Several of the more pertinent laws are summarized in the factors reports.

E. Other Natural and Manmade Factors

Drought is the principal natural condition that may have contributed to reduced spring/summer and fall chinook salmon production. Annual mean stream flows for the 1977 water year were

generally the lowest on record for many streams since the late nineteenth century (Columbia River Water Management Group 1978). The 1990 water year became the fourth consecutive year of drought conditions in the Snake River Basin (Columbia River Water Management Group in press). Drought conditions also prevailed in the Snake River Basin for the 1991 water year.

Artificial propagation programs were initiated following the major decline of Snake River spring/summer chinook salmon as an effort to offset juvenile and adult passage mortality resulting from hydroelectric development. Although artificial propagation programs have maintained returns on some areas, Snake River spring/summer chinook have continued to decline. Under this circumstance of low abundance, hatchery programs have contributed to the further decline of wild Snake River spring/summer chinook salmon through the taking of fish for broodstock purposes, behavioral and genetic interactions, competition, predation and the spread of disease.

The only artificial propagation facility for Snake River fall chinook salmon (Lyons Ferry Hatchery) initiated operation following the substantial decline of the species to offset impacts resulting from the construction of hydroelectric facilities on the Lower Snake River (Lower Granite, Little Goose, Lower Monumental and Ice Harbor Dams). This facility was intended to preserve the integrity of Snake River fall chinook salmon.

Artificial propagation activities have not been a primary factor in the decline of Snake River fall chinook salmon. However, the taking of Snake River fall chinook salmon for hatchery broodstock has reduced natural escapements, and the recent straying of fall chinook salmon from other areas into the Snake River threatens the genetic integrity of wild Snake River fall chinook salmon.

Determination

Based on its assessment of available scientific and commercial information, NMFS is issuing final determinations that Snake River spring/summer chinook salmon and Snake River fall chinook salmon are ESUs or "species" under the ESA and should be listed as threatened. The ESU for Snake River spring/summer chinook salmon is defined as all natural population(s) of spring/summer chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River. The natural population consists of all

fish that are the progeny of naturally spawning fish. The offspring of all fish taken from the natural population after the date of listing (for example, for research or enhancement purposes) are also part of the ESU (natural population).

NMFS is now listing only the natural populations; however, it is also important to address whether any existing hatchery population is similar enough to the natural population that it can be considered part of the ESU and, therefore, potentially used in recovery efforts. In general, hatchery populations that have been substantially changed as a result of artificial propagation should not be considered part of the ESU. To address this and related issues, NMFS is developing a policy on the role of artificial propagation under the ESA for Pacific salmon, and will publish its proposed policy in the *Federal Register* for public comment. After issuing a final policy, NMFS will propose any revisions to the listed ESUs to include various existing hatchery populations, if appropriate. Pending completion of this process, NMFS is excluding from the Snake River spring/summer and fall chinook ESUs all fish in or originating from a hatchery at the time of listing.

Protective Regulations

NMFS is adopting protective measures to prohibit, with respect to Snake River spring/summer and fall chinook, taking and interstate commerce and to implement the other ESA prohibitions applicable to endangered species, along with the exceptions provided by the ESA. These prohibitions apply to all individuals of the listed "species," wherever found, including the Snake and Columbia River basins and the North Pacific Ocean. These are the same measures that were proposed for Snake River spring/summer and fall chinook and that were adopted for the threatened Sacramento River winter-run chinook salmon (50 CFR 227.21; 55 FR 46515; November 5, 1990). The protective regulations for Snake River spring/summer chinook, Snake River fall chinook, and Sacramento River winter-run chinook have been combined into one section (50 CFR 227.21) for clarity. Although the regulatory language for the Sacramento River winter-run chinook salmon has been modified to clarify that the endangered species permit provisions apply also to the threatened species, it does not result in any substantive changes to the protections or exceptions for this species.

Since NMFS does not want these restrictions to result in the interruption of ongoing research and enhancement efforts directed at Snake River chinook

salmon, a temporary exception to the taking prohibitions is made for such activities. This exception applies only if an application, is submitted prior to the effective date of these regulations, and ceases upon the Assistant Administrator's rejection of the application as insufficient, upon issuance or denial of a permit, or on December 31, 1992, whichever occurs earliest.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, prohibitions on taking, recovery actions, and Federal agency consultation requirements. Recognition through listing promotes conservation actions by Federal and state agencies, private groups, and individuals.

For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with NMFS.

Examples of Federal actions that may affect Snake River chinook salmon include land-use management, in-river and ocean commercial and recreational fisheries, artificial propagation facilities, COE section 404 permitting activities under the Clean Water Act, and authorized purposes of mainstem Columbia River and Snake River hydroelectric and storage projects (including hydroelectric power generation, flood control, irrigation, and navigation), COE section 10 permitting activities under the Rivers and Harbors Act, and FERC licenses for non-Federal development and operation of hydropower.

Critical Habitat

NMFS has completed its analysis of the biological status of spring/summer and fall chinook salmon in the Snake River but has not completed the analysis necessary for the designation of critical habitat. NMFS has decided to proceed with the final listing determinations now and to proceed with the designation of critical habitat in a separate rulemaking. NMFS believes that this action is consistent with the intent of the 1982 amendments to the ESA: "The Committee feels strongly, however, that where the biology relating to the status of the species is clear, it should not be denied the protection of the Act because

of the inability of the Secretary to complete the work necessary to designate critical habitat." H. Rep. No. 567, 97th Cong., 2d Sess. 19 (1982).

NMFS has determined that final listing is appropriate and necessary to the conservation of Snake River spring/summer and fall chinook salmon. The prompt listing will bring the protection of the ESA into force, including the requirement that all Federal agencies consult with NMFS to ensure their actions are not likely to jeopardize the continued existence of the species. Prompt listing will result in consultations during the planning stages of certain 1992 operations and activities, and thus promote timely and effective consideration of measures to conserve Snake River spring/summer and fall chinook salmon.

Furthermore, NMFS has concluded that critical habitat is not determinable at this time because information sufficient to perform the required analysis of the impacts of the designation is lacking. NMFS recently solicited information necessary to determine critical habitat (56 FR 51684; October 15, 1991). Designation of critical habitat requires a determination of those physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection. NMFS has been reviewing scientific and biological information concerning habitat requirements of Snake River spring/summer and fall chinook salmon and has been identifying activities that may adversely impact those habitats. In addition, designation of critical habitat requires the consideration of economic information. NMFS is presently gathering and analyzing economic information needed for the designation (Tuttle 1991).

Further, management considerations and protection for spring/summer and fall chinook salmon are complicated by the possibility that these measures, if developed in isolation, may not be appropriate for Snake River sockeye salmon listed as an endangered species. Thus, NMFS is planning to propose concurrently critical habitat determinations for all listed Snake River salmon stocks.

Technical Amendment

NMFS is also issuing a technical amendment to 50 CFR 227.72(e) to clarify that the exception for incidental taking in subpart D—Threatened Marine Reptiles applies only to listed species of sea turtles, and not to listed salmon species.

Classification

The 1982 amendments to the ESA (Pub. L. 97-304) in section 4(b)(1)(A) restricted the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F. 2d 829 (6th Cir., 1981), these decisions are excluded from the requirements of the National Environmental Policy Act.

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that E.O. 12291 economic analysis requirements, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12812, or the President's Memorandum of January 28, 1992.

References

The complete citations for the references used in this document can be found in one of the following:

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- Idaho Department of Fish and Game. 1991. Snake River Basin Redd Counts. Information dated 27 November 1991 submitted to NMFS ESA Administrative Record for spring/summer and fall chinook salmon.
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Vigg, S., and C.C. Burley. 1989. Developing a Predation Index and Evaluating Ways to Reduce Juvenile Salmonid Losses to Predation in the Columbia River, pp. 5-221. In Nigro, A.A. (ed.) Developing a Predation Index and Evaluating Ways to Reduce Salmonid Losses to Predation in the Columbia River Basin, 1989 Annual Progress Report, Bonneville Power Admin., Portland, Ore.

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Waples, R.S. In press. Pacific Salmon and the Definition of "Species" Under the Endangered Species Act. Marine Fisheries Review.

Washington Department of Fisheries. 1991a. Genetic Evaluation of the Lyons Ferry Hatchery Stock and Wild Snake River Fall Chinook. Summary by Craig Busack dated 15 May 1991 submitted to NMFS ESA Administrative Record for fall chinook salmon.

Washington Department of Fisheries. 1991b. Stock Composition of Fall Chinook at Lower Granite Dam. Letter from Larrie Lavoy dated 12 December 1991 submitted to NMFS ESA Administrative Record for fall chinook salmon.

Washington Department of Fisheries. 1991c. 1991 Fall Chinook Radio Telemetry and Spawning Surveys for the Snake River. Preliminary summary by Glenn Mendal dated 13 December 1991 submitted to NMFS ESA Administrative Record for fall chinook salmon.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: April 17, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation of part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, new paragraphs (g) and (h) are added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(g) Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*). Includes all natural population(s) of spring/summer chinook

salmon in the mainstream Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, and Salmon River.

(h) Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). Includes all natural population(s) of fall chinook salmon in the mainstream Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River.

3. In Subpart C, § 227.21 is revised to read as follows:

§ 227.21 Threatened salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the threatened species of salmon listed in § 227.4 (e), (g) and (h) of this part, except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, and the provisions of regulations issued under the Act relating to endangered species (such as 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits), also apply to the threatened species of salmon listed in § 227.4 (e), (g) and (h) of this part. This section supersedes other restrictions on the applicability of 50 CFR part 222, including, but not limited to, the restrictions specified in §§ 222.2(a) and 222.22(a).

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmon listed in § 227.4 (g) and (h) of this part do not apply to activities specified in an application for a permit for scientific purposes or to enhance the propagation or survival of the species provided that the application has been received by the Assistant Administrator by May 22, 1992. This exception ceases upon the Assistant Administrator's rejection of the application as insufficient, upon issuance or denial of a permit, or on December 31, 1992, whichever occurs earliest.

§ 227.72 [AMENDED]

4. In § 227.72, paragraph (e)(1) is amended by removing the words "any species listed in § 227.4" and adding, in their place, the words "any species of sea turtle listed in § 227.4 (a), (b) and (c)."

[FR Doc. 92-9370 Filed 4-21-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No 920403-2103]

Pacific Coast Groundfish Fishery

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an emergency interim rule to restrict operations in the Pacific whiting fishery. These regulations are intended to minimize the impact of the Pacific whiting fishery on Pacific salmon stocks without undue hardship to the Pacific whiting industry. This action is necessary because many Pacific salmon stocks appear to be at record low levels, and some stocks may not meet 1992 escapement goals even if no fishery were conducted.

EFFECTIVE DATES: This emergency rule is effective from April 16, 1992 at 1706 hours, e.d.t., until 2400 hours (local time) July 21, 1992, and may be extended for an additional 90 days. Comments will be accepted through May 7, 1992.

ADDRESSES: Comments on this emergency rule may be submitted to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., Bin C15700, Seattle WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 310-980-4040.

SUPPLEMENTARY INFORMATION:

Background

In 1991, the Pacific whiting (whiting) fishery was completely "Americanized." The joint venture fishery (U.S. catcher vessels delivering whiting to foreign processing vessels at sea), which in the previous year had taken over 93 percent of the whiting quota, was completely displaced by a domestic at-sea catching and processing fleet. The domestic at-sea processing fleet is permitted to operate in areas that had been prohibited to foreign processing vessels south of 39° N. latitude. Those areas have been closed to foreign processing vessels due to concerns over the bycatch of salmon and rockfish and for national security reasons. In addition, domestic catcher vessels have been allowed to fish from 0-200 nautical miles (nm) offshore, whereas foreign trawl vessels could only fish seaward of 12 nm.

Whiting are found in fishable concentrations off California in the spring. The fishery follows the stock northward until it is predominantly in Canadian waters or offshore in the fall. The 1992 Pacific whiting season begins on April 15. An earlier fishery could be expected to increase effort in waters near the Cordell Bank and the Gulf of the Farallones National Marine Sanctuaries off the Coast of California, and could increase the likelihood of interception of Sacramento winter-run chinook salmon that have been listed as "threatened" under the Endangered Species Act (ESA). Chilipepper and bocaccio rockfish, which are also caught as bycatch in the whiting fishery, are found in these waters as well and used in fish meal. Otherwise, in a directed fishery for rockfish, chilipepper and bocaccio would generate a significantly higher price. In part to alleviate these concerns, an April 15 opening date was established for the whiting fishery beginning in 1992. This opening date approximates the traditional start of the fishery and was meant to maintain the historical season structure by counteracting the 1991 trend of beginning to fish for whiting early in the year and in the southernmost area of the fishery.

Although the April 15 opening date helps to reduce impacts on some salmon stocks, particularly Sacramento winter-run chinook salmon, further review of the fishery data for 1991 indicates that the bycatch of Sacramento winter run chinook and other salmon stocks, most notably Klamath River fall chinook, could be reduced further without undue hardship on the whiting fishery.

Recently completed salmon stock assessments for 1992 indicate that the abundance of Klamath River fall chinook salmon is predicted to be at a record low level and is not expected to meet the minimum escapement level or "escapement floor" of 35,000 even in the absence of all fishing. This year will mark the third consecutive year of underescapement and will thus require the Pacific Fishery Management Council (Council) to conduct a review of the depressed status of the stock to determine the cause of the stock decline and its relationship to fishing. Because of the depressed status of the Klamath River fall chinook stock, the Council is considering, for the first time, severely restrictive fishing options for the commercial and recreational salmon fisheries, one of which is a prohibition of ocean salmon fishing along a substantial portion of the Oregon and California coasts. These circumstances prompted the Council to consider further

ways to minimize the bycatch of salmon in the whiting fishery.

Between 1980 and 1991, the bycatch of salmon in the whiting fishery was consistently higher in the Eureka area than in other areas. (These bycatch statistics included data from the foreign directed-trawl fishery, the joint venture, and the 1991 domestic at-sea processing fleet.) The southern part of the Eureka region, from 42° N. latitude to Cape Mendocino (40°30' N. lat.), tended to record the highest salmon bycatch. In 1991, approximately 66,000 metric tons (mt) of whiting were caught by the at-sea processing fleet in the Eureka subarea (between 43° and 40°30' N. lat.), 34 percent of the total whiting catch. Associated with this catch, approximately 4,800 chinook salmon were taken, 76 percent of the total salmon catch taken by the at-sea processing fleet.

It is generally observed that a majority of the bycatch occurs in a few hauls. Within the Eureka Subarea, 50 percent of the salmon were taken in 8 of the 596 hauls observed by NMFS-certified observers. Coastwide only 16 percent of all observed whiting tows contained salmon; this percentage increases to about 25 percent in the Eureka Subarea. Although salmon avoidance measures voluntarily adopted by the at-sea processing fleet kept the coastwide incidence of salmon to approximately 8.03 salmon per mt of whiting in 1991 (one salmon in about 30 mt of whiting), well below the voluntary goal of 0.05, the catch and catch rate were higher in the Eureka area (0.07 salmon per mt of whiting).

At its March 9-13, 1992, meeting, the Council recommended a number of management measures designed to reduce further the bycatch of salmon without imposing undue hardship on the whiting fishery. These management measures are described below. Because of the extremely poor salmon returns expected in 1992, the Council requested the Secretary to implement these regulations as emergency regulations under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) before the 1992 whiting season begins on April 15.

Prohibit At-Sea Processing South of 42° N. Latitude

To protect the southern part of the Eureka area, the area of highest salmon bycatch, the Council recommended that whiting not be processed at sea south of 42° N. lat. This would shift the high-capacity at-sea processing fleet, which was able to take over 25,000 mt of whiting in a single week in 1991, to more northerly fishing areas where salmon

interception historically has been lower. It also would shift operations away from the waters near Cordell Bank and the Gulf of the Farallones Islands which experienced high bycatch of chilipepper rockfish (over 500 mt) in 1991.

This restriction would move the largest part of the whiting fleet (the at-sea catcher/processors, motherships and their catcher vessels) northward, removing the largest potential impact on Klamath River fall chinook and Sacramento winter-run chinook. Because of the mobility of these vessels, a shift to more northern waters is not expected to limit the at-sea processing fleet's ability to catch whiting, although it may slow their initial operations somewhat if whiting are not fully dispersed along the coast. However, whiting are expected to be migrating into the more northerly areas by April 15, and effort by the at-sea fleet is expected to be sufficient to harvest any amount of whiting that is available to them.

Catcher vessels that deliver whiting to shoreside processing plants will not be subject to this restriction. The shore-based fleet cannot follow whiting as freely because vessels need to stay within approximately 12 hours of the processing plants to maintain the quality of the fish. Unlike the at-sea processing fleet, shoreside processing plants are at fixed locations and depend on whiting caught locally; obviously, these plants are not able to follow the whiting as they migrate north. In addition, the amount of whiting expected to be harvested for delivery to shoreside processing plants is considerably less than the at-sea processing fleet would harvest in the area; consequently, the shore-based fleet's aggregate salmon bycatch is also expected to be relatively small. Thus, extending the prohibition against catchers that deliver to shoreside processors south of 42° N. lat. would unduly impact their ability to participate in the fishery, but would protect only a relatively small amount of salmon and rockfish.

The definition of processing for the purpose of this rule means the preparation of packaging of whiting to render it suitable for human consumption, industrial uses or long-term storage, except for heading and gutting unless additional preparation is done.

Close the Klamath and Columbia River Conservation Zones to Fishing for Whiting

The Klamath River and Columbia River conservation zones have been closed to the commercial and recreational salmon fisheries for some

years in order to conserve salmon stocks returning to these rivers. The Klamath River Salmon Conservation Zone extends approximately 6 nm north and 6 nm south of the Klamath River mouth and 12 nm seaward. The Columbia River Salmon Conservation Zone is roughly a square, 6 nm on each side, off the mouth of the Columbia River. Operators of whiting vessels voluntarily agreed not to operate in these relatively small areas in 1991. Given the record low levels of salmon, these zones will again be closed to the whiting fishery in 1992, this time through emergency rule to insure against any whiting fishing occurring in these zones.

Prohibit Directed Fishing for Whiting Shoreward of the 100-Fathom Contour in the Eureka Subarea

Another pattern evident from the analysis of the historical salmon bycatch data is the tendency for bycatch rates to be higher in shallower, nearshore areas. An analysis of the bycatch rate inside and outside of the 100-fathom contour in the Eureka Subarea from 1988 to 1990 indicated that salmon bycatch rates were 9 to 16 times higher shoreward of the 100-fathom contour. Most, if not all, of the 1991 whiting harvest in the Eureka Subarea, the area of greatest salmon bycatch and bycatch rates, was taken seaward of 100 fathoms. Concerned that a shift in the whiting fishery to more nearshore waters could increase the bycatch of Klamath River salmon and other stocks above 1991 levels, the Council recommended that all fishing for whiting be prohibited in waters shoreward of the 100-fathom contour in the Eureka Subarea.

Although catcher vessels that deliver whiting to shoreside processing plants are not subject to the 42° N. lat. restriction applied to the at-sea processing fleet, the restriction against fishing shoreward of the 100-fathom contour in the Eureka area applies to all catcher vessels in the whiting fishery. The Council's recommendation was aimed at the fishery that targets whiting because of the magnitude and intensity of that fishery, and data which indicate that a significant amount of the salmon bycatch in the whiting fishery occurs shoreward of 100 fathoms and in the Eureka Subarea.

Trawl vessels fishing for other ground-fish species inside 100 fathoms, primarily bottom trawl vessels, often have a bycatch of Pacific whiting. In order to prevent forcing these vessels to disrupt their fishing operations by having to sort and discard incidentally caught whiting without providing any

additional protection to salmon, the Secretary has modified the Council's recommendation to provide an exception to allow them to take, retain, and land up to 2,000 pounds of whiting from areas shoreward of the 100-fathom contour. Although little is known about the bycatch of salmon by non-whiting groundfish vessels, it is thought that most of their bycatch occurs during the winter, not during the whiting season.

The prohibition against fishing for whiting shoreward of the 100-fathom contour applies only in the Eureka Subarea. The prohibition was not extended to more northerly areas because the 100-fathom contour extends much further offshore in more northerly areas, which could adversely impact the whiting fleet's ability to harvest whiting. Incidences of higher whiting abundance can occur shoreward of 100 fathoms in the more northerly areas. If the fishery were forced seaward of 100 fathoms in these areas, some vessels would be pushed outside of their normal operating range and be unable to make whiting deliveries to shoreside processing plants. In addition, the immediate salmon bycatch problem is only in the Eureka Subarea, although some concern exists that with a greater amount of whiting effort being shifted to the north, the salmon bycatch rate on other salmon stocks may increase. The Council intends to monitor the salmon bycatch rates of both the at-sea processing and the shoreside sectors of the fishery in 1992, and may make future adjustments in response to additional information.

Prohibit Night Fishing

Traditionally, the catcher vessels supplying the foreign joint venture processors did not operate at night until the high-capacity surimi processors appeared in 1988. In 1991, some harvesting did occur throughout the night. An analysis of the 1991 catch rate of salmon by time of day (determined by the time the net began to be retrieved, or "haulback") revealed that salmon were most likely to be taken in the whiting fishery between midnight and 6 a.m. coastwide. Consequently, the Council recommended that fishing for whiting be prohibited coastwide between midnight and one half hour after sunrise.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that, in light of new information regarding the depressed status of Pacific coast salmon stocks in the Klamath, Columbia, and Sacramento rivers, the bycatch of salmon in the whiting fishery must be reduced as much as practicable in order

to protect the salmon stocks. In order to be effective, this rule must be implemented before the start of the whiting season on April 15. This action is consistent with the Magnuson Act and other applicable law. The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for comment, or to delay for 30 days the effective date of this rule, as generally required by section 553 (b) and (d) of the Administrative Procedure Act. The public had opportunities to comment on the substance of this emergency rule during the meeting of the Council and its advisory committees in March 1992. Furthermore, the public participated in the September 1991 Council meetings during which reports were presented that examined the bycatch of salmon and rockfish in the whiting fishery by time of day, month, and geographical area, and which resulted in a delay in the whiting season opening until April 15. The public also will have an opportunity to comment on the emergency measures during the comment period provided by this rule.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule 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.

An environmental assessment (EA) has been prepared for this action and the Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Directors (see ADDRESSES).

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

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement state regulations compatible with the Federal rule.

The Council has requested that the States of Washington, Oregon, and California concur with its finding that the proposed action is consistent with

the States' approved coastal management programs.

List of Subjects in 50 CFR Part 663

Administrative practices and procedures, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: April 16, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, from April 16, 1992 at 1706 hours, e.d.t., until 2400 hours (local time), July 21, 1992, 50 CFR part 663 is amended as follows.

PART 663—[AMENDED]

1. The authority citation for part 663 continues to read as follows:

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

2. A new § 663.23(b)(4) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(4) *Pacific whiting—1992 bycatch restrictions.*—(i) *Closed Areas.* Pacific whiting may not be taken and retained in the following portions of the Fishery Management Area:

(A) Klamath River Salmon

Conservation Zone: The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately six nautical miles (nm) north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nm from shore), and on the south by 41°26'48" N. latitude (approximately 6 nm south of the Klamath River mouth);

(B) Columbia River Salmon

Conservation Zone: The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167 True to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty;

(ii) No more than 2,000 pounds of Pacific whiting may be taken and retained, possessed, or landed by a vessel that at any time during the same fishing trip fished in the Fishery Management Area shoreward of the 100-fathom contour (as shown on NOAA Charts 18580, 18600, and 18620 in the Eureka subarea (from 43°00'00" N. lat. to 40°30'00" N. lat.).

(iii) Pacific whiting may not be processed at sea south of 42°00'00" N. latitude (Oregon-California border). For purposes of this paragraph (b)(4)(iii), "processing" means the preparation or packaging of Pacific whiting to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

(iv) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the Fishery Management Area on any morning between 0001 hours to one-half hour after official sunrise. Official sunrise is determined, to the nearest 5° latitude, in The Nautical Almanac for the Year 1992 issued by the Nautical Almanac Office, United States Naval Observatory under the authority of the Secretary of the Navy, and available from the U.S. Government Printing Office.

* * * * *

[FR Doc. 92-9304 Filed 4-16-92; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 920 109-2009]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces a reduction in the daily trip limit for sablefish taken with nontrawl gear from 500 pounds to 250 pounds. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limit is necessary to keep landings within the nontrawl harvest guideline for this species while extending the fishery as long as possible during the year. This 250-pound daily trip limit will remain in effect until the regular season begins on May 12, 1992.

DATES: Effective from 0001 hours (local time) April 17, 1992. Comments will be accepted through May 7, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700—Bldg. 1, Seattle, Washington 98115-0070; or Charles E. Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd;

suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4030.

SUPPLEMENTARY INFORMATION: The notice of 1992 groundfish fishery specifications and management measures (57 FR 1654; January 15, 1992) announced a two-tier scheme of trip landing limits for the nontrawl sablefish fishery that began in January and was intended to extend until the beginning of the regular nontrawl sablefish season. The fishing year began with a 500-pound daily trip limit that was increased to 1,500 pounds on March 1, 1992, with the stipulation that, if 440 metric tons (mt) of the 3,612 mt designated for the nontrawl sablefish fishery was taken prior to the beginning of the regular season, the 500-pound daily trip limit would be reimposed. On March 20, 1992, the 440 mt was projected to have been exceeded, and the daily trip limit was reduced to 500 pounds (57 FR 10429; March 26, 1992).

In early April, the Pacific Fishery Management Council (Council) found that due to increased effort in the fishery, the catch was much higher than initially expected, approximately 1,400 mt before the 500-pound trip limit was reimposed. The trip limits preceding the "regular" season were intended to allow small incidental catches to be landed and to allow small fisheries to operate year-round (57 FR 1654; January 15, 1992). They also were intended to prevent discards (55 FR 52055; December 19, 1990). However, it became apparent that the 1,500-pound daily trip limit had attracted unprecedented levels of new effort and was sustaining a viable and growing target fishery. At its April meeting, the Council heard testimony that substantial targeted effort was likely to continue even under the 500-pound trip limit. The best available April data also support this trend.

Consequently, the Council recommended that the 500-pound daily trip limit be reduced to 250 pounds, so that most of the remainder of the harvest guideline would be available for the regular season to last more than a few weeks. The Council noted that discards would be reduced if target fishing is curtailed, because fewer vessels would be trying to bring in the maximum allowable amount; when fishermen target on small trip limits, they often exceed the trip limit and discard the surplus at sea. The Council also recommended that the 250-pound daily trip limit be reimposed at the end of the regular season, on the date

necessary to extend the nontrawl sablefish fishery as long as possible during the year. To maintain the Council's original intention, NOAA is imposing a 250-pound daily trip limit until the beginning of the regular season on May 12, 1992, and announces its intent to reimpose the 250-pound daily trip limit after the end of the regular season. All weights are in round weight or round weight equivalents.

Secretarial Action

The Secretary of Commerce concurs with the Council's recommendations, and for the reasons stated above announces:

(1) From 0001 hours (local time) April 17, 1992, until 2400 hours (local time) May 11, 1992, the daily trip limit for sablefish caught with nontrawl gear is 250 pounds. This trip limit applies to sablefish of any size.

(2) Following the regular season, at 0001 hours on a date to be announced in the *Federal Register*, the daily trip limit for sablefish caught with nontrawl gear will be 250 pounds, which applies to sablefish of any size.

(3) The restrictions apply to all sablefish caught with nontrawl gear between 3 and 200 nautical miles offshore Washington, Oregon, and California. All sablefish caught with nontrawl gear and possessed within 0 to 200 nautical miles offshore Washington, Oregon, and California are presumed to have been taken and retained between 3 and 200 nautical miles offshore Washington, Oregon, or California, unless otherwise demonstrated by the person in possession of those fish.

Classification

The determination to reduce the daily trip limit for the nontrawl sablefish fishery is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until May 4, 1992.

Because any delay in the implementation of this action would result in a continued excessive harvest in the nontrawl sablefish fishery prior to the beginning of the regular season, the Secretary finds that no delay should occur in its effective date. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness requirement of the Administrative Procedure Act.

This action was authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact

Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the NEPA requirement to prepare an environmental assessment in accordance with paragraph 6.02c.3.(f) of the NOAA Administrative Order 216-6.

This action is taken under the authority of 50 CFR 663.23(c) and section III.B.1. of the appendix to 50 CFR part 663, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

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

Dated: April 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-9389 Filed 4-17-92; 2:34 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 920382-2082]

Groundfish of the Gulf of Alaska

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

ACTION: Emergency interim rule; request for comments; corrections.

SUMMARY: This document corrects an emergency interim rule published Friday, April 3, 1992 (57 FR 11433). The emergency interim rule revised management measures applicable to the management and monitoring of prohibited species bycatch amounts.

EFFECTIVE DATE: March 30, 1992.

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, Fisheries Management Biologist, NMFS, Alaska Region, (907) 586-7228.

As published, the regulations contain errors in paragraph references under § 672.20(g) that need correction.

Accordingly, the publication on April 3, 1992, of the emergency interim rule, which was the subject of FR 92-7659, is corrected as follows:

§ 672.20 [Corrected]

1. In amendatory instruction 2. on page 11439, on the last line in the first

column, "(g)(3)" is corrected to read "(g)(4)".

2. In amendatory instruction 2. on page 11439, on the second and third lines in the second column, "(g)(4), (g)(5), (g)(6)", are corrected to read to "(g)(5), (g)(6), (g)(7)".

3. In the regulatory text on page 11439, in the second column, on the 21st line from the bottom of the page, the paragraph designation, "(4)" is corrected to read "(5)".

4. In the regulatory text on page 11439, in the second column, on the fourth line from the bottom of the page, the paragraph designation "(5)" is corrected to read "(6)".

5. In the regulatory text on page 11439, in the third column, on the 12th line from the top of the column, the paragraph designation "(6)" is corrected to read "(7)".

6. In the regulatory text on page 11439, in the third column, under § 672.20(g)(6), which has been correctly designated as § 672.20(g)(7), in the second line in that paragraph "(g)(4), and (g)(5)" is corrected to read "(g)(5), and (g)(6)".

Dated: April 16, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-9290 Filed 4-21-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Apportionment of reserve; notice of closure; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are needed in the domestic annual processing (DAP) fishery for Atka mackerel in the Bering Sea and Aleutian Islands (BSAI) area. In addition, NMFS is establishing a directed fishing allowance for Atka mackerel in the BSAI area and is prohibiting further directed fishing for Atka mackerel in the BSAI. This action is necessary to prevent the total allowable catch (TAC) for Atka mackerel in the BSAI from being exceeded. The intent of this action is to promote optimum use of groundfish while conserving Atka mackerel stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), April 16, 1992, through 12 midnight, A.l.t., December 31, 1992.

ADDRESSES: Comments should be sent to Steven Pennoyer, Director, Alaska

Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802-1668, or delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT:

Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) governs the groundfish fishery in the exclusive economic zone in the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. The TACs for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

Apportionment

In accordance with § 675.20(a)(3), 15 percent of the TAC for each target species category is placed in a reserve, and the remaining 85 percent of the TAC for each target species is apportioned between domestic annual harvesting and the total allowable level of foreign fishing. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species category provided that such apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species category. As established in § 675.20(b)(1)(i), NMFS will apportion reserve amounts to a target species category as needed.

The initial 1992 TAC specified for Atka mackerel in the BSAI subarea is 36,550 mt (57 FR 3952, February 3, 1992), all of which was apportioned to DAP. NMFS finds that the Atka mackerel DAP fishery in the BSAI area requires an additional 6,450 mt of Atka mackerel to continue operations. Therefore, under the authority provided in § 675.20(b)(1)(i), NMFS apportions 6,450 mt from the reserve to the Atka mackerel TAC, resulting in a revised Atka mackerel TAC of 43,000 mt in the BSAI area. The TAC increase is apportioned to DAP resulting in a revised DAP of 43,000 mt. This apportionment is consistent with § 675.20(a)(2)(i) and does not result in

overfishing of BSAI area Atka mackerel stocks as the revised TAC is less than the overfishing level, which is 435,000 mt.

Closure to Directed Fishing

The Director of the Alaska Region, NMFS, (Regional Director) has determined that the Atka mackerel TAC in the BSAI is likely to be reached before the end of the year. Therefore, NMFS is establishing a directed fishing allowance of 42,000 mt and is setting aside the remaining 1,000 mt of the revised Atka mackerel TAC as bycatch to support anticipated groundfish fisheries. The Regional Director has determined that the directed fishery will catch its allowance by April 16, 1992. Consequently, under § 675.20(a)(8), NMFS is prohibiting directed fishing for Atka mackerel in the BSAI effective 12

noon, A.L.T., April 16, 1992, through midnight, A.L.T., December 31, 1992.

After this closure, in accordance with § 675.20(h)(6), amounts of Atka mackerel retained on board a vessel in the BSAI may not equal or exceed 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable and contrary to the public interest. Without this apportionment, U.S. groundfish

fishermen would have to discard bycatches of Atka mackerel in the BSAI, resulting in needless economic waste of valuable fishery resources. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until May 1, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-9271 Filed 4-16-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 57, No. 78

Wednesday, April 22, 1992

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.

PRESIDENTS COMMISSION ON WHITE HOUSE FELLOWSHIPS

1 CFR Part 425

Privacy Act; Exemption of Records

AGENCY: President's Commission on White House Fellowships.

ACTION: Proposed rule.

SUMMARY: The President's Commission on White House Fellowships is amending its Privacy Act regulations to permit the withholding of information, disclosure of which would compromise the objectivity of the White House Fellowship application rating process.

DATES: Comments must be submitted on or before June 22, 1992.

ADDRESSES: Send or deliver comments to Elsa Thompson, Director, President's Commission on White House Fellowships, 712 Jackson Place, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Janet Kelliher, (202) 395-4522.

SUPPLEMENTARY INFORMATION: The President's Commission on White House Fellowships was established to give qualified young Americans the opportunity to gain firsthand experience in the process of governing the nation. As part of the process of selecting participants for the program, the President's Commission on White House Fellowships evaluates applications based on leadership ability, community involvement, intellectual achievement, and career accomplishments.

The Privacy Act of 1974, at 5 U.S.C. 552a(k)(5), authorizes agencies to promulgate regulations exempting from the Privacy Acts access requirement "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to

the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence." Records of the applications to participate in the White House Fellowships Program are maintained in a system of records under the Privacy Act, 40 FR 56651 (1975). The proposed rule would permit the President's Commission on White House Fellowships to deny access to the names of evaluators of the application. This will protect the objectivity of the process of rating applications for participation in the White House Fellowships program.

E.O. 12291, Federal Regulation

The proposed exemption does not meet the standard set forth in Executive Order 12291 classification as a major rule, and no regulatory analysis statement is required.

Regulatory Flexibility Act

I certify that the proposed exemption will not have a significant impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Public Law 96-354, because it applies only to individual records of applicants participating in the White House Fellowships Program.

List of Subjects in 1 CFR Part 425

Administrative practice and procedure, Privacy.

President's Commission on White House Fellowships.

Elsa B. Thompson,
Director.

Accordingly, the President's Commission on White House Fellowships is amending 1 CFR part 425 as follows:

PART 425—PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

1. The authority citation for part 425 continues to read as follows:

Authority: 5 U.S.C. 552a(f).

2. A new section 425.6 is added to read as follows:

§ 425.6 Exempt records.

All information in these records that meets the criteria stated in 5 U.S.C.

552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to material compiled solely for the purpose of determining qualifications for Federal employment as a White House Fellow and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the selection process.

[FR Doc. 92-9268 Filed 4-21-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-91-016]

Tobacco Inspection—Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period of April 27 through May 1, 1992, for producers of flue-cured tobacco who sell their tobacco at auction in Williamston, Robersonville, and Windsor, North Carolina, to determine producer approval of the designation of the Williamston, Robersonville, and Windsor tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27 through May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456; telephone number (202) 205-0587.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Williamston, Robersonville, and Windsor, North Carolina. Williamston and Robersonville, North Carolina, were separately designated on August 16, 1941, and Windsor on June 16, 1950, (7 CFR 29.8001) as flue-cured tobacco

auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act the three markets have been receiving mandatory grading services from USDA.

On July 9, 1991, an application was made to the Secretary of Agriculture to consolidate the designated markets of Williamston, Robersonville, and Windsor, North Carolina. The application, filed by warehouse operators in those markets, was made pursuant to the regulation promulgated under the Tobacco Inspection Act (7 CFR part 29.1-29.3). On November 7, 1991, a public hearing was held in Williamston, North Carolina, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on April 6, 1992.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27 through May 1, 1992. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Williamston, Robersonville, and Windsor are in favor of, or opposed to, the designation of the consolidated market for the 1992 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Williamston-Robersonville-Windsor.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Williamston, Robersonville, or Windsor, North Carolina, auction market during the 1991 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1992, should immediately contact Ernest L. Price at (202) 205-0567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 20, 1992.

Daniel Haley,
Administrator.

[FR Doc. 92-9528 Filed 4-21-92; 1:32 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AWP-18]

Proposed Modification to the Los Angeles Terminal Control Area (TCA); Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FAA is proposing to modify the Los Angeles TCA. The proposed modification includes: A reduction in the ceiling from 12,500 feet mean sea level (MSL) to 10,000 feet MSL an increase in the base altitude west of Santa Monica from 4,000 feet MSL to 5,000 feet MSL, an expansion of the eastern boundary in order to ensure TCA containment of high performance jet aircraft descending on the glideslope from 10,000 feet MSL, an expansion of the southern and southeastern boundaries in order to provide TCA containment to/from 10,000 feet MSL. Informal airspace meetings have been scheduled to provide the opportunity to gather additional facts relevant to the aeronautical effects of the proposal and to provide interested persons an opportunity to discuss objections to the proposal. All comments received at these meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking (NPRM).

DATES: All meetings begin at 7 p.m. and end at 10 p.m., and will be held on the following dates:

1. June 23, 1992, Brentwood, California.
2. June 25, 1992, San Diego, California.
3. June 30, 1992, Los Alamitos, California.
4. July 1, 1992, Walnut, California.

ADDRESSES: The meetings will be held at the following locations:

1. Brentwood—Brentwood Theater, Westwood Veterans Administration, Brentwood, California.
2. San Diego—National University, Chamberlin Hall, 4085 Camino Del Rio South, San Diego, California.
3. Los Alamitos—Theater Building #6, Los Alamitos Armed Forces Reserve Center, End of Lexington Drive/South of Katella, Los Alamitos, California.

4. Walnut—Mt. San Antonio College, Bldg. 26, Lecture Hall, 1100 North Grand Avenue, Walnut, California.

COMMENTS: Send or deliver comments in triplicate to: Federal Aviation Administration, Docket No. 91-AWP-18, Attention: Air Traffic Division, System Management Branch, AWP-530, P.O. Box 92007 WWP, Los Angeles, CA 90009-2007.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Bowman, System Management Branch, AWP-531.5, telephone (310) 297-0433.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA Western-Pacific Region. Representatives from the FAA will present a formal briefing on the proposed TCA design. All other participants will be given an opportunity to deliver comments or make a presentation.

(b) Any person wishing to make a presentation to the FAA team will be asked to sign in and estimate the amount of time needed for such a presentation. This will permit the team to allocate an appropriate amount of time to each presenter. The team may limit the time available for each presentation in order to accommodate all speakers. The meeting may be adjourned prior to 10 p.m., if no additional comments are presented.

(c) Any person who wishes to present a position paper to the team, pertinent to the topic of the Los Angeles TCA, may do so. Persons wishing to hand out position papers to the attendees should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(d) The meeting will not be formally recorded, however, informal tape recordings of presentations may be made to ensure that each respondent's comments are noted accurately. A summary of the comments at the meeting will be made available to all interested parties.

Materials relating to the proposed modifications of the Los Angeles TCA will be accepted at the meeting. Every reasonable effort will be made to hear requests for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the team until July 20, 1992.

Agenda

Opening remarks and discussion of meeting procedures briefing on proposed

modifications to Los Angeles TCA public presentation.
Public Presentation.
Closing Comments.

Issued in Los Angeles, California, on April 8, 1992.

Charles Aalfs,

*Acting Manager, Air Traffic Division,
Western-Pacific Region.*

[FR Doc. 92-9367 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 1613]

Bureau of Politico-Military Affairs; Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is the result of an advanced notice of proposed rulemaking published in the *Federal Register* (56 FR 43894), September 5, 1991. This proposed rule is intended to amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. In the long run, the Department intends to amend the U.S. Munitions List by adding a new category XV covering space-related articles and moving certain spacecraft-related items from the coverage of categories VIII and XI and placing them under the coverage of a new category XV. This proposed rule will identify those communications satellites in the new category XV whose capabilities and characteristics are sufficiently "military" in nature as to necessitate their control under the U.S. Munitions List. This proposed rule is also intended to reduce the burden on exporters in two ways: First, by clarifying which complete communications satellites are covered under the U.S. Munitions List (USML), and second, by moving undesignated communications satellites to the export licensing jurisdiction of the Department of Commerce. This latter move will occur only after appropriate worldwide controls are instituted by the Department of Commerce to control such satellites once they have been transferred.

DATES: Comments must be submitted on or before May 22, 1992.

ADDRESSES: Written comments should be sent to: Kenneth M. Peoples, Office of Defense Trade Controls, SA-6, room 200, U.S. Department of State,

Washington, DC 20522-0602, fax (703) 875-6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, tel. (703) 875-6644, or Peter Rensema, Office of Advanced Technology, Department of State, tel. (202) 647-2433.

SUPPLEMENTARY INFORMATION:

On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include removal from the USML of all items contained on the COCOM dual-use list (also known as the "CORE" list) unless significant U.S. national security interests would be jeopardized. In implementing this directive, the Department headed an interagency working group which reviewed the coverage of spacecraft and related components and determined that in the time allotted for this exercise, specific items could not be determined for removal. Therefore, in further implementation of the Presidential directive, the Department of State began chairing a space technical working group comprised of the Departments of State, Commerce, Defense, and other national security agencies. The group is empowered to move commercial satellites and related articles identified by the COCOM IL off the USML except for such commodities and technical data that overlap with the items in category XV of the USML published in the September 5, 1991 advanced notice of proposed rulemaking. Previously, the group proposed new language for category XV(b)(4) Global Positioning System (GPS) receiving equipment, which was published as a proposed rule in the *Federal Register* (57 FR 1886), January 16, 1992. This proposed rule on the jurisdiction of non-military communications satellites to be controlled under new category XV(b)(2) of the ITAR is the result of the group's latest recommendation. As the group continues its review of space-related material, further proposed rules clarifying the language of new category XV will be published.

Finally, this proposed rule changes the language of the headings for category XV (a) and (b) as well as adding more detailed language for communications satellites in section XV(b)(2). To assist you in understanding this proposed rule, category XV, as published in the September 5, 1991, *Federal Register*, is being reprinted as follows:

Category XV—Spacecraft Systems and Associated Equipment

*(a) Spacecraft and associated hardware, including both ground and space elements, which are either specifically designed or modified for military applications. This includes but is not limited to the following:

(1) Remote sensing satellite, earth observation and surveillance satellites, space observation satellites, and their major systems and subsystems that may be used for intelligence and targeting applications, including (but not limited to) cameras and other sensors and their major components (e.g. optics, focal planes, cryocoolers, radars, lasers, imaging radiometers, large aperture antennas, receivers, tuners) specifically designed or modified for use in a spacecraft; space qualified signal processors, and data compression and mass storage devices specifically designed or modified for satellites; and associated equipment for the timely transmission, exploitation and dissemination of data from such satellites.

(2) Communications satellites and their major systems and subsystems specifically designed or modified to provide secure anti-jam capability, including (but not limited to) communications security (COMSEC) and transmission security (TRANSEC) equipment; interference cancellation devices; nulling or steerable spot-beam antennas; spread spectrum or frequency agile signal generation baseband processing equipment; equipment for satellite crosslink; and spaceborne atomic clocks. See also categories XI(b) and XIII(b).

(3) Equipment specifically designed or modified to enhance space system survivability (both ground and space elements), including nuclear, laser, radio-frequency, and kinetic hardening (beyond levels needed for commercial life in the natural environment); microelectronic integrated circuits radiation hardened for space application; decoys; active and passive countermeasures; and warning receivers. See also category XI(a)(8) and category XIII (d) and (e).

(4) Equipment specifically designed or modified for precision navigation capabilities, including receivers incorporating NAVSTAR GPS PPS features or employing encryption/decryption capabilities; differential GPS equipment; null steering antennas, GPS user equipment suitable for use in missiles or remotely piloted vehicles; and GPS satellite simulators.

(5) Equipment specifically designed or modified for space and strategic defense weapons systems (ground-to-space, space-to-space, space-to-ground), including attitude and positive determination, control, and pointing subsystems with precision and stability suitable for weapons direction; high torque attitude control actuators; magnetic suspension devices; spaceborne lasers; high power microwave devices; high power pulsed power supplies; chemical release devices; explosive ordnance other than those suitable only for deployment of stowed appendages or other deployable devices; ECM and ECCM subsystems; and subsystems for command and control of such weapons. See also categories XII(a), XIII(f), and VIII(e).

(b) All other satellites and associated equipment specifically designed or modified for such satellites not enumerated in paragraph (a) of this category, regardless of their missions, unless specifically removed in accordance with the provisions of 120.5 of this subchapter.

(c) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) and (b) of this category.

(d)(1) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to any defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(d)(2) Technical data as defined in § 120.21 for the design, development, production, or manufacture of spacecraft systems and associated equipment (both military and non-military), regardless of which U.S. Government agency has jurisdiction for the export of the hardware. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

As indicated in our *Federal Register* notice published on September 5, 1991, the space technical working group (STWG), in reviewing specific areas, had not yet been able to identify clearly the line between civil and military spacecraft and related equipment. Consequently, the Department announced that it would in future notices (such as this one) resolve which articles could be more precisely defined

and which coverage overlaps between the Commodity Control List and USML could be eliminated. The STWG has now determined that communications satellites requiring control on the U.S. Munitions List could be more clearly defined by delineating specific communications satellite parameters that represent significant national security interests. The results of this effort is reflected in the proposed category XV(b)(2) language. This proposed amendment is intended in subparagraph (2) of category XV(b) to provide guidance and definition regarding those complete communications satellites which will in future continue to remain under the export licensing jurisdiction of the USML. In addition to the deliberations of the STWG itself, limited industry input has been received through a special working group meeting on December 18, 1991, and follow-up correspondence received as a result of that special meeting.

The language for category XV, paragraph (c) regarding components and paragraph (d) regarding technical data and defense services have been modified from the version published on September 5, 1991. This proposed rule envisions the movement of complete commercial communications satellite systems to the CCL only when those satellites do not contain any capabilities or characteristics controlled under proposed category XV(b)(2). Thus, all components, parts accessories, attachments and associated equipment which have been specifically designed, modified or configured for any satellite (including those that would be moved to the CCL under this proposed rule) continue to be under the export licensing jurisdiction of the Department of State until the STWG completes its review of such equipment. The language for paragraph XV(c) now includes an explanatory note that authorizes the Department of Commerce to include on its export licenses for commercial communications satellites a specific line item for minor components and spare parts (including ground support equipment) for a specific launch. This authorization is intended to minimize situations requiring licenses from both State and Commerce for a specific launch. It does not imply movement of the affected commodities to the CCL unless specifically moved by separate action by the Department. In addition, any spares or ground equipment exported under a Commerce license in this fashion must return to the United States following completion of the launch campaign.

The language in paragraph XV(d), subparagraph XV(d)(1) would now control all technical data and defense services for the defense articles controlled under paragraphs (a) and (c) of category XV. Subparagraph (d)(2) would also control all technical data and defense services for paragraph (b) of category XV. The latter subparagraph also controls detailed design, development, manufacturing and production information for any satellite or any specifically designed or modified component, part, accessory, attachment, or associated equipment for satellites, whether the satellite in question is controlled on the CCL or the USML. All other technical data and services related to satellites moved to the CCL would also move to the control of the CCL. The language published on September 5, 1991, would have made all technical data related to Significant Military Equipment (SME) also be treated as SME. This language has been modified, and, under this proposed rule, consistent with all other categories of the USML, only technical data related to the manufacture or production of SME would be treated as SME.

The Department of State will continue its efforts to identify and resolve overlap of the COCOM dual use items and the USML. Each success will result in publication of a proposed rule clarifying, modifying or deleting those paragraphs about the new category XV which are identified in the *Federal Register* (56 FR 43894), September 5, 1991 and reserved in this notice of rulemaking.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a notice of proposed rulemaking in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this notice of proposed rulemaking. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1404-0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, category XV is added to read as follows:

§ 121.1 General. The United States Munitions List.

Category XV—Spacecraft Systems and Associated Equipment

* (a) Spacecraft and associated hardware, including ground support equipment, specifically designed or modified for military use.

(b) Spacecraft, including their ground stations, with any of the following characteristics:

- (1) Reserved. (remote sensing satellites)
- (2) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in § 121.1 with any of the following characteristics:

a. Anti-jam capability. Antennas and/or antenna systems with ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference.

b. Antennas with:

1. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; or
2. Sidelobes less than or equal to -35dB; or
3. Antennas designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).

c. Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links").

d. Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed on a channel by channel basis among previously assigned fixed frequencies several times a day.

e. Employing any of the cryptographic items controlled under category XIII(b) of this section.

f. Employing radiation-hardened devices controlled elsewhere in § 121.1 that are not "embedded" in the satellite in such a way as to deny physical access. (Here "embedded" means that the device cannot feasibly either be removed from the satellite or be used for other purposes.)

g. Spacecraft having propulsion systems which permit acceleration of the satellite on-orbit (i.e., after orbit injection) at rates greater than 0.1g.

h. Spacecraft having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees azimuth and elevation.

i. Spacecraft having orbit transfer engines ("kick-motors") which remain permanently with the spacecraft and are capable of providing acceleration greater than 1g. (Orbit transfer engines which are not designed, built, and shipped as an integral part of the satellite are controlled under category IV of this section.)

(3) Reserved. (survivability)

(4) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

a. Designed for encryption or decryption (e.g., Y-Code) of GPS positioning service (PPS) signals;

b. Designed for producing navigation results above 80,000 feet altitude and at 1,000 knots velocity or greater;

c. Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

d. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km.

(Note: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this paragraph.)

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this subparagraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(5) Reserved. (Spacecraft high power subsystems, etc.)

(c) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed, modified or configured for the articles in paragraphs (a) and (b) of this category, as well as for any satellites under the export licensing jurisdiction of the Department of Commerce, except as set forth in the explanatory note in this paragraph.

Explanatory Note: This language is not intended to preclude a license application of

a complete satellite that is under the jurisdiction of the Department of Commerce from including in that license application any directly associated components, parts, accessories, attachments and associated equipment (including ground support equipment) unless such items are specifically identified for control in paragraph (a) or (b) of this category or any other category of § 121.1. It is understood that spares, replacement, ground support and test equipment, payload adapter/interface hardware, etc. are typically provided as part of a satellite launch campaign; however, such items are only exempt from USML licensing when their intended use is directly related to supporting the Commerce-licensed satellite launch campaign. Once the satellite has been successfully launched, it is understood that such items will be returned to the United States.

(d)(1) Technical data (as defined in § 120.21 of this chapter) and defense services (as defined in § 120.8 of this chapter) directly related to any defense articles enumerated in paragraphs (a) and (c) of this category. (See § 125.4 of this chapter for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(2) Technical data (as defined in § 120.21 of this chapter) and defense services (as defined in § 120.8 of this chapter) directly related to any defense articles enumerated in paragraphs (a) and (c) of this category. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and associated equipment, regardless of which U.S. Government agency has jurisdiction for export of the hardware. (See § 125.4 of this chapter for exceptions.) This restriction does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, delivery expectations) and data necessary to operate and maintain associated ground equipment. Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

Dated: April 13, 1992.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92-9293 Filed 4-21-92; 8:45 am]

BILLING CODE 4710-25-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

22 CFR Part 1101

Privacy Act of 1974

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.
ACTION: Proposed rule.

SUMMARY: The United States Section, International Boundary and Water Commission (IBWC) has revised its regulations to better implement the provisions of the Privacy Act of 1974 and to assure compliance with the Office of Management and Budget (OMB) Privacy Act Implementation Guidelines and Responsibilities.

DATES: Comments should be submitted in writing to the address shown below by May 22, 1992.

ADDRESSES: United States Section, International Boundary and Water Commission (IBWC), 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422.

FOR FURTHER INFORMATION CONTACT: Mr. Reinaldo Martinez, U.S. Section Privacy Act Officer (915-534-6674)

SUPPLEMENTARY INFORMATION: This document revises the regulations relating to the Privacy Act of 1974 (Pub. L. 93-579, as amended; 5 U.S.C. 552a) by changing and/or adding the following:

- a. Address information is being updated.
- b. Section 1101.3, paragraph (d) has been added. Previous rules did not mention that the request should state that it is being made under the Privacy Act.
- c. Section 1101.03, paragraph (i) has been changed. It now includes a statement to the effect that every effort will be made to provide the requested records within thirty (30) days.
- d. Section 1101.6, paragraph (c) has been changed. Previous rules did not mention that a request to correct or amend a record should state that it is for a record that falls under the Privacy Act. Subparagraphs (1) thru (5) have been changed to clarify the five basic elements needed in a request for correcting or amending records that fall under the Privacy Act.
- e. Section 1101.10, paragraph (a) has been changed. It has been rewritten to clarify that only copying fees may be charged under the Privacy Act and that no fees will be charged for search time or interpretation of the Act.
- f. Section 1101.17, Annual report to Congress, has been added.

List of Subjects in 22 CFR Part 1101

Privacy. It is proposed to revise 22 CFR part 1101 as follows:

PART 1101—PRIVACY ACT of 1974

Sec.

- 1101.1 Purpose and scope.
- 1101.2 Definitions.
- 1101.3 General policy: Collection and use of personal information.
- 1101.4 Reports on new systems of records; computer matching programs.
- 1101.5 Security, confidentiality and protection of records.
- 1101.6 Requests for access to records.
- 1101.7 Disclosure of records to individuals who are subjects of those records.
- 1101.8 Disclosure of records to third parties.
- 1101.9 Exemptions.
- 1101.10 Accounting for disclosures.
- 1101.11 Fees.
- 1101.12 Request to correct or amend a record.
- 1101.13 Agency review of request to correct or amend Record.
- 1101.14 Appeal of agency decisions not to correct or amend record
- 1101.15 Judicial review.
- 1101.16 Criminal penalties.
- 1101.17 Annual report to Congress.

Authority: Privacy Act of 1974 (Pub. L. 93-579, as amended; 5 U.S.C. 552a).

§ 1101.1 Purposes and scope.

The purposes of these regulations is to prescribe responsibilities, rules, guidelines, and policies and procedures to implement the Privacy Act of 1974 (Pub. L. 93-579, as amended; 5 U.S.C. 552A) to assure that personal information about individuals collected by the United States Section is limited to that which is legally authorized and necessary and is maintained in a manner which precludes unwarranted intrusions upon individual privacy. Further, these regulations establish procedures by which an individual can:

- (a) Determine if the United States Section maintains records or a system of records which includes a record pertaining to the individual and
- (b) gain access to a record pertaining to him or her for the purposes of review, amendment or corrections.

§ 1101.2 Definitions.

For the purpose of these regulations:

- (a) *Act* means the Privacy Act of 1974.
- (b) *Agency* is defined to include any executive department, military department, Government corporation, Government controlled corporation or other establishment in the executive branch of the Government (including the Executive Office of the President, or any independent regulatory agency) (5 U.S.C. 552(e)).
- (c) *Commission* means the International Boundary and Water Commission, United States and Mexico.

(d) *Commissioner* means head of the United States Section, International Boundary and Water Commission, United States and Mexico.

(e) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(f) *Maintain* includes maintain, collect, use, or disseminate.

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(h) *Routine Use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it is collected.

(i) *Section* means the United States Section, International Boundary and Water Commission, United States and Mexico.

(j) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8 (Census data).

(k) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1101.3 General policy: Collection and use of personal information.

(a) Heads of Divisions, Branches, and the projects shall ensure that all Section personnel subject to their supervision are advised of the provisions of the Act, including the criminal penalties and civil liabilities provided therein, and that Section personnel are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to ensure that no system of records concerning individuals, no matter how small or specialized, is maintained without public notice.

(b) Section personnel shall:

- (1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a

function or carry out a responsibility or function of the Section.

(2) Collect from individuals only that information which is necessary to Section responsibilities or functions;

(3) Collect information, whenever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purpose thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and within the scope of an authorized investigation or adjudication activity;

(6) Advise an individual's supervisors of the existence or contemplated development of any system of records which retrieves information about individuals by individual identified;

(7) Maintain an accounting of all disclosures of information to other than Section personnel;

(8) Disclose no information concerning individuals to other than Section personnel except when authorized by the Act or pursuant to a routine use published in the Federal Register;

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made to other than Section personnel; and

(10) Call to the attention of the PA Officer any information in a system maintained by the Section which is not authorized to be maintained under the provisions of the Act; including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) The system of records maintained by the Section shall be reviewed annually by the PA Officer to ensure compliance with the provisions of the Act.

(d) Information which may be used in making determinations about an individual's rights, benefits, and privileges shall, to the greatest extent practicable, be collected directly from that individual. In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following

criteria, amount others, may be considered;

(1) Whether the nature of the information sought is such that it can only be obtained from a third party;

(2) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(3) Whether there is a risk that information requested from the third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(4) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(5) Whether provisions can be made for verification by the individual of information collected from third parties.

(e) Employees whose duties require handling of records subject to the Act shall, at all time, take care to protect the integrity, security and confidentiality of these records.

(f) No employee of the Section may alter or destroy a record subject to the Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision of the Commissioner or the decision of a court of competent jurisdiction.

§ 1101.4 Reports on new systems of records; computer matching programs.

(a) Before establishing any new systems of records, or making any significant change in a system of records, the Section shall provide adequate advance notice to:

(1) The Committee on Government Operations of the House of Representatives;

(2) The Committee on Governmental Affairs of the Senate; and

(3) The Office of Management and Budget.

(b) Before participating in any computerized information "matching program," as that term is defined by 5 U.S.C. 552a(a)(8) the Section will comply with the provisions of 5 U.S.C. 552a(o), and will provide adequate advance notice as described in § 1101.4(a) above.

§ 1101.5 Security, confidentiality and protection of records.

(a) The Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience or unfairness to any

individual on whom information is maintained.

(b) When maintained in manual form (typed, printed, handwritten, etc.) records shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 1101.3 and state that the Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours: (i) The area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, that security shall be supplemented by (i) providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be opened with a master key. For purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Act.

(5) Personnel handling personal information during routine use will ensure that the information is properly controlled to prevent unintentional or unauthorized disclosure. Such information will be used, held, or stored only where facilities or conditions are adequate to prevent unauthorized or unintentional disclosure.

(c) When the records subject to the Act are maintained in computerized form, safeguards shall be utilized based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of the records.

§ 1101.6 Requests for access to records.

(a) Any individual may submit an inquiry to the Section to ascertain

whether a system of records contains a record pertaining to him or her.

(b) The inquiry should be made either in person or by mail addressed to the PA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422. The PA Officer shall provide assistance to the individual making the inquiry to assure the timely identification of the appropriate systems of records. The office of the PA Officer is located in Suite C-316 and is open to an individual between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding holidays).

(c) Inquiries submitted by mail should be marked "PRIVACY ACT REQUEST" on the bottom left-hand corner of the envelope.

(d) The letter should state that the request is being made under the Privacy Act.

(e) Inquiries concerning whether a system of records contains a record pertaining to an individual should contain the following:

(1) Name, address and telephone number (optional) of the individual making the inquiry;

(2) Name, address and telephone number (optional) of the individual to whom the record pertains, if the inquiring individual is either the parent of a minor or the legal guardian of the individual to whom a record pertains;

(3) A certified or authenticated copy of documents establishing parentage or guardianship;

(4) Whether the individual to whom the record pertains is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States;

(5) Name of the system of records, as published in the *Federal Register*;

(6) Location of the system of records, as published in the *Federal Register*;

(7) Such additional information as the individual believes will or might assist the Section in responding to the inquiry and in verifying the individual's identity (for example: date of birth, place of birth, names of parents, place of work, dates of employment, position title, etc.);

(8) Date of inquiry; and

(9) Signature of the requester.

The Section reserves the right to require compliance with the identification procedures appearing at paragraph (f) of this section where conditions warrant.

(f) The requirements for identification of individuals seeking access to records are as follows:

(1) In person: Each individual making a request in person shall be required to present satisfactory proof of identity.

The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document bearing the individual's signature, preferably issued for participation in a federally sponsored program (for example, Social Security card, unemployment insurance book, employer's identification card, national credit card and professional, craft or union membership card); and

(iii) A document bearing either the photograph or the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, the Section will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3).

(2) Not in person: If the individual making a request does not appear in person before the PA Officer, a certificate of a notary public or equivalent officer empowered to administer oaths must accompany the request.

(3) Parents of minors and legal guardians: An individual acting as the parent of a minor or the legal guardian of the individual or an heir or legal representative of a deceased person to whom a record pertains shall establish his or her personal identity in the manner prescribed in either paragraph (f) (1) or (2) of this section. In addition, such individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the requirements of paragraph (f) of § 1101.7 are satisfied. In the case of an heir or legal representative of a deceased person the proof of identity shall be a certified copy of the Will, if any; the order of a court of competent jurisdiction admitting the Will to probate; the order of a court of competent jurisdiction appointing an

executor, executrix, or administrator; a letter of administration; or any other documentary evidence which establishes the identity of the individual as an heir or legal representative of a deceased person.

(g) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Section will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(h) An inquiry which is not addressed as specified in paragraph (b) of this section or which is not marked as specified in paragraph (c) of this section will be so addressed and marked by the Section's personnel and forwarded immediately to the PA Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until forwarding of the inquiry to the PA Officer has been effected. In each instance when an inquiry so forwarded is received, the PA Officer shall notify the individual that his or her inquiry was improperly addressed and the date when the inquiry was received at the proper address.

(i) Each inquiry received shall be acted upon promptly by the PA Officer. Although there is no fixed time when an agency must respond to a request for access to records under the Act, every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays and Holidays) of the date of receipt. If a response cannot be made within ten (10) days, the PA Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. Every effort will be made to provide the requested records within thirty (30) days.

(j) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

§ 1101.7 Disclosure of records to individuals who are subjects of those records.

(a) Each request received shall be acted upon promptly by the PA Officer. Every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays, and holidays) of the date of receipt. If a response cannot be made within ten (10) days due to unusual circumstances, the PA Officer shall send an acknowledgment during that period providing information on the status of the request and asking for such

further information as may be necessary to process the request. Every effort will be made to provide the requested records within thirty (30) days. "Unusual circumstances" shall include circumstances where a search for and collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(b) Grant of access: (1) Notification.

(i) An individual shall be granted access to a record pertaining to him or her except where the record is subject to an exemption under the Act and these rules.

(ii) The PA Officer shall notify the individual of such determination and provide the following information:

(A) The methods of access, as set forth in paragraph (b)(2) of this section.

(B) The place at which the records may be inspected;

(C) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty (30) days from the date of notification;

(D) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 1101.11. In no event shall the estimated date be later than thirty (30) days from the date of notification;

(E) The fact that the individual, if he or she wishes, may be accompanied by another individual during the personal access, subject to the procedures set forth in paragraph (f) of this section; and

(F) Any additional requirements needed to grant access to a specific record.

(2) Method of access: The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be made in the office specified by the PA Officer, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding holidays);

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the PA Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility

will not unduly interfere with operations of the Section or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 1101.11. The Section, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records: Upon advice by a physician that release of medical information directly to the requester could have an adverse effect on the requester, the Section may attempt to arrange an acceptable alternative. This will normally involve release of such information to a physician named by the requester, with the requester's written consent. (Note that release to any third party, including a physician or family member, must comply with the provisions of § 1101.8 of this part.)

(d) The Section shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Section reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example 5 U.S.C. 552(k)(1)). In no event shall original records of the Section be made available to the individual except under the immediate supervision of the PA Officer or his designee. Title 18 U.S.C. 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy a record filed in a public office, or to attempt to do any of the foregoing.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing and shall include the name of the other individual, a specific description of the record to which access is sought, and the date and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the PA Officer or his designee. An individual shall not be required to state a reason or otherwise justify his or her decision to be

accompanied by another individual during the personal access to a record.

(g) Initial denial of access: (1) Grounds. Access by an individual to a record which pertains to that individual will be denied only upon a determination by the PA Officer that:

(i) The record is subject to an exemption under the Act and these rules;

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 1101.7(c) pertaining to medical records have been temporarily invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(2) Notification. The PA Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The PA Officer's name and title or position;

(ii) The date of denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and these rules;

(iv) The individual's opportunities for further administrative consideration, including the identity and address of the responsible official;

(v) If stated to be administratively final within the Section, the individual's right to judicial review under 5 U.S.C. 552a(g)(1) and (5).

(3) Administrative review: When an initial denial of a request is issued by the PA Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, the sole procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). Such petition shall be filed with the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422. If the exception was determined by another agency, the PA Officer will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Section, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Commissioner.

(ii) As to denial under paragraph (g)(1), (ii), (iii) or (iv) of this section, the individual may file for review with the Commissioner, as indicated in the PA Officer's initial denial notification.

(h) If a request is partially granted and partially denied, the PA Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.8 Disclosure of records to third parties.

(a) The Section will not disclose any information about an individual to any person other than the individual except in the following instances:

(1) Upon written request by the individual about whom the information is maintained;

(2) With prior written consent of the individual about whom the information is maintained;

(3) To the parent(s) of a minor child, or the legal guardian of an incompetent person, when said parent(s) or legal guardian act(s) on behalf of said minor or incompetent person.

(4) When permitted under 5 U.S.C. 552(b) (1) through (11) which provides as follows:

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552 of the U.S. Code;

(iii) For a routine use as defined in the Act at 5 U.S.C. 552a(a)(7);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the U.S. Code;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances

affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee, and to a Congressman who is acting on behalf of his constituent;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(xi) Pursuant to the order of a court of competent jurisdiction;

(5) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b). These situations include the following:

(i) Dissemination of a corrected or amended record or notation of a disagreement statement (5 U.S.C. 552a(c)(4));

(ii) Disclosure of records to an individual to whom they pertain (5 U.S.C. 552a(d));

(iii) Civil actions by an individual (5 U.S.C. 552a(g));

(iv) Release of records or information to the Privacy Protection Study Commission (section 5 of Pub. L. 93-579);

(v) Fulfill the needs of Office of Management and Budget to provide continuing oversight and assistance to the section in implementation of the Act (section 6 of Pub. L. 93-579.).

§ 1101.9 Exemptions.

The following are exempt from disclosure under 5 U.S.C. 552a(j) and (k):

(a) Any record originated by another agency which has determined that the record is exempt. If a request encompasses such a record, the Section will advise the requester of its existence, and of the name and address of the source agency.

(b) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy, and which are, in fact, properly classified pursuant to such executive order.

(c) Those systems of records listed as exempt in the Notice of Records of the Federal Register, including: Certificates of Medical Examination; Occupational Health and Injury Files; and Investigative Records.

§ 1101.10 Accounting for disclosures.

(a) Each system manager shall establish a system of accounting for all disclosures of records, either orally or in

writing made outside the Section, unless otherwise exempted under this section. Accounting procedures may be established in the least expensive and most convenient form that will permit the PA Officer to advise individuals promptly upon request of the persons or agencies to which records concerning them have been disclosed. Accounting of disclosures made under 5 U.S.C. 552a(b)(7) relating to civil or criminal law enforcement activities shall not be made available to the individual named in the record.

(b) Accounting records, at a minimum, shall include the date, nature, and purpose of each disclosure of a record and the name and address of the person or agency to whom the disclosure was made. Accounting records shall be maintained for at least five years or the life of the record, whichever is longer.

(c) Accounting is not required to be kept for disclosure made within the Section or disclosures made pursuant to the Freedom of Information Act.

(d) If an accounting of the disclosure was made, the PA Officer shall inform any person or other agency about any correction or notation of dispute made by the Section in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency.

§ 1101.11 Fees.

(a) Under the Act, fees can only be charged for the cost of copying records. No fees may be charged for the time it takes to search for the records or for the time it takes to determine if any exemptions apply. The Section will not charge a fee for the first copy of an individual's personnel record.

(b) The Section will charge a fee of \$0.10 per page for copies of documents which are identified by an individual and reproduced at the individual's request for retention, except that there will be no charge for requests involving costs of \$1.00 or less, but the copying fees for contemporaneous request by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at the request of the individual, such as certification or authentication, will be charged to the individual in accordance with other published regulations of the Section pursuant to statute (for example, 22 CFR part 1102—Freedom of Information Act.)

(d) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the U.S. Section, International Boundary and Water Commission, and delivered

to or mailed to the PA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422. The Section will assume no responsibility for cash sent by mail.

(e) A receipt for fees paid will be given only upon request.

§ 1101.12 Request to correct or amend a record.

(a) Any individual may submit a request for correction of or amendment to a record to the Section. The request should be made either in person or by mail addressed to the PA Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment.

(b) Since the request, in all cases, will follow a request for access under § 1101.6, the individual's identity will be established by his or her signature on the request.

(c) A request for correction or amendment should be in writing. The envelope containing the request should be marked "Privacy Act Amendment Request" on the lower left hand corner. The request should include the following:

(1) First, the letter should state that it is a request to amend a record under the Privacy Act of 1974.

(2) Second, the request should identify the specific record and the specific information in the record for which an amendment is being sought.

(3) Third, the request should state why the information is not accurate, relevant, timely, or complete. Supporting evidence may be included with the request.

(4) Fourth, the request should state what new or additional information, if any, should be included in place of the erroneous information. Evidence of the validity of new or additional information should be included. If the information in the file is wrong and needs to be removed rather than supplemented or corrected, the request should make this clear.

(5) Fifth, the request should include the name, address, and telephone number (optional) of the requester.

§ 1101.13 Agency review of request to correct or amend a record.

(a)(1) Not later than ten (10) days (excluding Saturdays, Sundays and holidays) after receipt of a request to correct or amend a record, the PA Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to

process the request. The estimate of time may take into account unusual circumstances as described in § 1101.7(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within ten (10) days (excluding Saturdays, Sundays and holidays). Requests filed in person will be acknowledged in writing at the time submitted.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within ten (10) days, the PA Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in an electronic data bank); or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The PA Officer's name, title and position;

(B) The date of denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and these rules;

(D) The procedures for appeal of the denial as set forth in § 1101.14.

The term *promptly* in this paragraph means within thirty (30) days (excluding Saturdays, Sundays and holidays). If the PA Officer cannot make the determination within thirty (30) days, the individual will be advised in writing of the reason therefore and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the PA Officer shall notify all persons and agencies to which copies of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a receipt agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it has disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the PA Officer in reviewing a request for correction or amendment.

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected.

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Section will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the PA Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended was compiled in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The record sought to be corrected or amended is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or

(5) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(f) If a request is partially granted and partially denied, the PA Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.14 Appeal of Agency decision not to correct or amend a record.

(a) An appeal of the initial refusal to amend a record under § 1101.13 may be requested by the individual who submitted the request. The appeal must be requested in writing, and state that the appeal is being made under the Privacy Act of 1974, it should identify

the denial that is being appealed and the records that were withheld, it should include the requester's name and address and telephone number (optional), and it should be signed by the individual making the request. It should be received by the Section within sixty (60) calendar days of the date the individual is informed of the PA Officer's refusal to amend a record in whole or in part. The request should be addressed and sent via certified mail to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422. The processing of appeals will be facilitated if the words "PRIVACY APPEAL" appear in capital letters on both the envelope and the top of the appeal papers. An appeal not addressed and marked as provided herein will be marked by Section personnel when it is so identified and will be forwarded immediately to the Commissioner.

(b) The time for decision on the appeal begins on the date the appeal is received by the Commissioner. The appeal should include any documentation, information or statements advanced for the amendment of the record.

(c) There shall be a written record of the reason for the final determination. The final determination will be made not later than thirty (30) days (excluding Saturdays, Sundays and holidays) from the date the Commissioner receives the appeal; unless, for good cause shown, the Commissioner extends such determination beyond the thirty (30) day period.

(d) When the final determination is that the record should be amended in accordance with the individual's request, the Commissioner shall direct the office responsible for the record to comply. The office responsible for the record shall:

- (1) Amend the record as directed;
 - (2) If a distribution of the record has been made, advise all previous recipients of the record of the amendment and its substance;
 - (3) So advise the individual in writing.
- (e) When the final decision is that the request of the individual to amend the record is refused; the Commissioner shall advise the individual:

- (1) Of the refusal and the reasons for it;
- (2) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Section;
- (3) Of the procedures for filing the statement of disagreement;
- (4) That the statement which is filed will be made available to anyone to whom the record is subsequently

disclosed together with, at the discretion of the Section, a brief statement by the Section summarizing its reasons for refusing to amend the record:

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(6) Of his or her right to seek judicial review of the Section's refusal to amend the record.

(f) When the final determination is to refuse to amend a record and the individual has filed a statement under paragraph (e)(2) of this section, the Section will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to use or disclose it. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Section will note that the information is disputed and provide a copy of the individual's statement. The Section may also include a brief summary of the reasons for not making a correction when disclosing disputed information. Such statements will normally be limited to the reasons given to the individual for not amending the record. Copies of the Section's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by the individual under these rules.

(g) An appeal will be decided on the basis of the individual's appeal papers and the record submitted by the PA officer. No personal appearance or hearings on appeals will be allowed.

§ 1101.15 Judicial review.

After having exhausted all administrative remedies set forth in § 1101.7(g)(3) or § 1101.14, a requester may bring a civil action against the Section, in a United States District Court of proper venue, within two years of the final administrative decision which the requester seeks to challenge.

§ 1101.16 Criminal penalties.

(a) Under the provisions of the Act, it is a federal crime for any person to knowingly and willfully request or obtain information from a Federal agency, including this Section, by false pretenses.

(b) It is also a crime for any officer or employee of the Section to knowingly and willfully:

- (1) Make an unauthorized disclosure; or
- (2) Fail to publish public notice of a system of records as required by 5 U.S.C. 552a(e)(4).

§ 1101.17 Annual report to Congress.

(a) On or before August 1 of each calendar year the Commissioner shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(1) The U.S. Section's point of contact responsible for implementing the Privacy Act of 1974;

(2) The number of active systems, new systems published, systems deleted, systems automated, either in whole or part, number of existing systems for which new routine uses were established, number of existing systems for which new exemptions were claimed, number of existing systems from which exemptions were deleted, and number of public comments received by the agency of publication of rules or notices;

(3) Total number of requests for access, number of requests wholly or partially granted, number of requests totally denied, number of requests for which no record was found, number of appeals of denials of access, number of appeals in which denial was upheld, number of appeals in which denial was overturned either in whole or part, number of requests to amend records in system, number of amendment requests wholly or partially granted, number of amendment requests totally denied, number of appeals of denials of amendment requests, number of appeals in which denial was upheld, number in which denial was overturned either in whole or in part, whether the U.S. Section denied an individual access to his or her records in a system of record on any basis other than a Privacy Act exemption under 5 U.S.C. 552 (j) or (k), and the legal justification for the denial, number of instances in which individuals litigated the results of appeals of access or amendment, and the results of such litigation, and a statement of our involvement in matching programs;

(4) Any other information which will indicate the U.S. Section's effort to comply with the objectives of the Act, to include any problems encountered, with recommendations for solving thereof;

(5) And, a copy of these regulations.

Dated: March 31, 1992.

Reinaldo Martinez,
Privacy Act Officer.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 738; Re: Notice Nos. 728 and 729; 89F-92P and 89F-90P]

RIN 1512-AA07

Reopening of the Comment Periods of the Proposed Oakville and Rutherford Viticultural Areas

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Reopening of the written comment periods on two proposed rules.

SUMMARY: This notice announces the reopening of the written comment periods for the proposed Oakville and Rutherford viticultural areas. The two proposed areas are immediately adjacent to each other and are both located in Napa County, California. In Notice Nos. 728 and 729 (56 FR 47039 and 47044), published in the *Federal Register* on September 17, 1991, ATF detailed proposals for the establishment of these two viticultural areas and requested comments. In consideration of the comments received, ATF has decided to reopen the comment periods of both notices to give all interested persons more time to submit additional written evidence (comments) concerning whether these two proposed viticultural areas should be established and, if so, what boundaries should be adopted. ATF feels this additional comment period is necessary since it was obvious from the comments received that there was an expectation that a public hearing would be held. ATF is not contemplating holding a public hearing on this matter.

DATES: Written comments must be received by July 21, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 738). Copies of the petitions, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-927-8230).

SUPPLEMENTARY INFORMATION: Background

On September 17, 1991, ATF published two notices of proposed rulemaking, Nos. 728 and 729 (56 FR 47039 and 47044), in the *Federal Register*. In the notices, proposals were made for the establishment of two viticultural areas in Napa County, California, to be known as Oakville and Rutherford.

As specified in Notice No. 728, the proposed Oakville viticultural area is located just north of the town of Yountville, and approximately 10 miles northwest of the city of Napa. In very general terms, the proposed Oakville boundary goes as far north as Skellenger Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, and as far south as approximately one mile northwest of the town of Yountville.

As specified in Notice No. 729, the proposed Rutherford viticultural area is located just south of the city of St. Helena and approximately 12 miles northwest of the city of Napa. In very general terms, the proposed Rutherford boundary goes as far north as Zinfandel Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, and as far south as Skellenger Lane with the exception of one area going approximately .5 mile south of Skellenger Lane.

It is important to note that the proposed southern boundary of Rutherford coincides exactly with the proposed northern boundary of Oakville.

In response to the two notices of proposed rulemaking, ATF received a total of 19 comments. After reviewing the comments, it appears there is controversy concerning the northern and northeastern boundary of Rutherford, the southern boundary of Rutherford, and the southwestern boundary of Oakville. In addition, one commenter is against any further subdivision of Napa Valley.

Nine commenters disagree with the northern boundary of Rutherford. These commenters feel that the Rutherford boundary should extend further north either to Sulphur Creek or to the southern city limits line of St. Helena.

One commenter disagrees with the northeastern boundary of Rutherford. He feels that the northeastern boundary should continue to be the 500-foot contour line (which would include the Spring Valley area) rather than changing

to the 380-foot contour line which would exclude the Spring Valley area.

Two commenters disagree with the southern boundary of Rutherford. Both commenters feel that any boundaries for Rutherford must include Beaulieu Vineyard properties No. 2 and No. 4 which have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and which have contributed greatly to the development and consumer recognition of the Rutherford name. These two vineyard properties are currently within the proposed Oakville viticultural area. One of the commenters suggests that these two vineyard properties either be "grandfathered" into the Rutherford viticultural area or else allow part of the Rutherford viticultural area to overlap with part of the Oakville viticultural area so as to include these two vineyard properties in both the Rutherford and Oakville areas.

Two commenters disagree with the southwestern boundary of Oakville. Both commenters feel that the southwestern boundary extends too far south into what they feel is Yountville. According to one of these commenters, the Oakville/Yountville border has always been known by the locals to be Dwyer Road to Highway 29, then Yount Mill Road to Rector Creek. This commenter submitted evidence which suggests that one winery and several other businesses located south of Dwyer Road have Yountville addresses and consider themselves to be in the Yountville area. These businesses are currently located within the boundaries of the proposed Oakville viticultural area.

Request for Additional Comments

Based on the information presented in the comments, it is apparent that disagreement exists as to whether these two viticultural areas should be established and, if so, what boundaries should be adopted for these two areas.

Therefore, ATF desires to obtain more information on the establishment of these two viticultural areas, their proposed boundaries, and other possible boundaries.

For these reasons, ATF has determined that the reopening of the comment periods of the two notices is necessary and would serve the public interest. The purpose of the reopening is to obtain additional evidence for the record and to afford interested parties an additional opportunity to express their views. Evidence obtained and views expressed will be considered in the preparation of any final rules.

concerning the Oakville and Rutherford viticultural areas.

It is extremely important that all interested parties submit any additional evidence which they want considered concerning the establishment of these two viticultural areas during this additional comment period since it is not currently contemplated that a public hearing will be held.

In all written comments, each topic to be discussed should be separately numbered and each numbered topic should specify the factual basis supporting the views, data, or arguments presented. Comments submitted which are not supported by factual evidence will not be particularly helpful in developing a reasoned regulatory decision. However, all written comments received, both during the original comment period and during this additional comment period, will be considered in the development of a decision on this matter.

ATF specifically requests that commenters consider making written comments on the following questions:

1. What are the historical and current boundaries (north, south, east, west) of the areas known as Oakville and Rutherford?

2. Why, and how, should the boundaries of Oakville and Rutherford, as proposed in Notice Nos. 728 and 729 respectively, be modified?

3. What geographical or climatic features, or other current or historical evidence, support the extension of the Rutherford area north of Zinfandel Lane into the Sulphur Creek area, or northeast of the 380-foot contour line, along the proposed northeastern border of Rutherford, into the Spring Valley area?

4. What geographical or climatic features, or other current or historical evidence, support the extension of the southern boundary of the proposed Rutherford viticultural area to include Beaulieu Vineyard properties No. 2 and No. 4, which are currently within the proposed Oakville viticultural area?

5. What geographical or climatic features, or other current or historical evidence, support using Dwyer Road and Yount Mill Road as the southwestern border of the proposed Oakville viticultural area? Currently, the proposed southwestern border extends south of Dwyer Road approximately 1 mile.

6. Is there any additional evidence, other than what is currently in the Oakville and Rutherford petitions, which supports the boundaries of the proposed Oakville and Rutherford viticultural areas as proposed in Notice Nos. 728 and 729 respectively?

7. Is there evidence that the name of the proposed Rutherford viticultural area is locally or nationally known as including the area north of Zinfandel Lane to include the Sulphur Creek area, or northeast 380-foot contour line along the northeastern border of Rutherford to include the Spring Valley area, or south of Skellenger Lane along the southern border of Rutherford to include Beaulieu Vineyard properties Nos. 2 and 4?

8. Is there evidence that the name of the proposed Oakville viticultural area is locally or nationally known as including the area south of Dwyer Road and Yount Mill Road up to a distance of approximately 1 mile?

9. What do wineries outside of the proposed Oakville and Rutherford areas consider to be the Oakville and Rutherford grape growing areas?

10. To what extent have wineries in the Oakville and Rutherford areas, as proposed in Notice Nos. 728 and 729, as well as those wineries located in the previously mentioned controversial areas, identified themselves as being in either Oakville or Rutherford?

11. To what extent have grapes grown in the proposed Oakville or Rutherford areas, or in the previously mentioned controversial areas, been or not been marketed as either Oakville or Rutherford grapes?

Drafting Information

The author of this document is Robert White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Authority: This notice reopening the comment periods of the proposed Oakville and Rutherford viticultural areas is issued under the authority of 27 U.S.C. 205.

Approved: April 16, 1992.

Stephen E. Higgins,
Director.

[FR Doc. 92-8365 Filed 4-21-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 85-096]

RIN 2115-AC03

Navigation on Certain Waterways Tributary to the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearings;
Extension of comment-period.

SUMMARY: On September 26, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) concerning navigation on certain waterways tributary to the Gulf of Mexico (56 FR 48773); on December 18, 1991, the Coast Guard extended the comment-period through March 26, 1992 (56 FR 65720). In response to several requests, the Coast Guard held public hearings in Corpus Christi, TX, Galveston TX, and New Orleans, LA, and extended the comment-period through April 27, 1992. In response to several more requests, received after the first three hearings were scheduled, the Coast Guard will hold one more hearing, in Saint Louis, MO. Also, to allow time for any written comments that may arise from the final hearing, the Coast Guard will extend the comment-period by another month.

DATES: The comment-period for the proposed rulemaking is extended to, and comments must be received on or before, May 28, 1992. The date of the public hearing is May 15, 1992, as further explained in **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406) [CGD 85-096], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments will become part of the public docket for this rulemaking and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

The site of the public hearing is Saint Louis, MO. The time and place of the public hearing are specified in **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Harry C. Robertson, Short Range Aids to Navigation Division, U.S. Coast Guard Headquarters, (202) 267-0405; or Mr. Monty Ledet, Aids to Navigation Branch, Eighth Coast Guard District, (504) 589-4686.

SUPPLEMENTARY INFORMATION: The Coast Guard is holding another public hearing and extending the comment-period for the NPRM, which concerns navigation on certain waterways tributary to the Gulf of Mexico. The Coast Guard has received several requests for a hearing in Saint Louis, MO. There are corporations, barge lines,

and other members of the towing community that are based up the Mississippi from the Gulf yet that do business in the area covered by the NPRM. Some of these would like the opportunity to discuss the NPRM in a public hearing as well as to send their comments to the docket. Holding a public hearing in Saint Louis may also let some citizens, who might not ordinarily write letters to the docket, express themselves for the record.

Therefore, in recognition of the need for meaningful dialogue and information to assist in completing this rulemaking, the Coast Guard is holding a public hearing at the following time and place: Mary 15, 1992 (Friday), at 1 p.m., Auditorium, second floor, Second Coast Guard District Office, R. A. Young Federal Building, 1222 Spruce Street, Saint Louis, MO 63103-2832.

For the same reason, the Coast Guard is extending the comment-period by another month.

The Coast Guard strongly encourages comments on all aspects of this rulemaking. (In particular, it welcomes any suggestions that may help with the Environmental Assessment.) It strongly encourages all that may be affected by its allowing double-wide tows on the Gulf Intracoastal Waterway as a matter of course to offer comments, whether in person, by letter, or both. The spectrum of interests is potentially very broad and includes—as well as maritime towing interests and their insurers—individuals, environmental organizations, and governments at every level, among others.

Persons wishing to offer spoken comments at any of the hearings should notify the Executive Secretary, Marine Safety Council, at the address cited in **ADDRESS**, above, in writing; or either of those listed in **FOR FURTHER INFORMATION**, above, by telephone.

Dated: April 15, 1992.

A. Cattalina,

*Captain U.S. Coast Guard, Acting Chief,
Office of Navigation Safety and Waterway
Services.*

[FR Doc. 92-9274 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-014-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 92-52; FCC 92-98]

Reexamination of the Policy Statement on Comparative Broadcast Hearings

ACTION: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to reexamine the criteria used to select among mutually exclusive applicants for broadcast facilities. The intended effect of this proposal is to remedy any perceived defects in the existing system, to produce swifter more certain choices among applicants for new broadcast facilities, and to preserve the public interest benefits of making such choices. Consideration of this proposal is prompted by the passage of time since the criteria were last comprehensively examined, and the dramatic changes that have occurred in the broadcast marketplace, in broadcast technologies, and in the Commission's regulatory policies.

DATES: Comments must be filed on or before May 26, 1992; reply comments must be filed on or before June 15, 1992.

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

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 632-7220.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, GC Docket No. 92-52, adopted on March 12, 1992 and released April 10, 1992. The full text of the notice of proposed rule making is available for inspection and copying during normal business hours in the FCC's Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20037, (202) 452-1422.

Summary of Notice of Proposed Rule Making

1. In this notice, the Commission invites commenters to address the efficacy of the Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965), which detailed the criteria to be used to select among competing applicants for new broadcast facilities. In light of changes in Commission policy, the realities of the broadcast industry, and the current state of broadcast technology, the Commission questions whether use of the existing criteria continues to result in selection of the applicant that will best serve the public interest. Moreover, comparative hearings using these criteria often appear to become bogged down in litigating subjective or trivial distinctions and the criteria themselves may invite manipulation by the applicants.

2. The Commission proposes to consider the following modifications of the comparative process. First, the Commission will consider whether to retain, eliminate, or modify four criteria: integration, proposed program service, past broadcast record, and auxiliary power, and to reexamine other current comparative factors. In addition, the Commission seeks comment on whether to add new criteria to help select the most qualified applicant. Specifically, the Commission will consider whether to use a new criterion called a "service continuity preference", designed to enhance the public interest in the comparative process by encouraging comparative applicants to retain the stations they are attempting to secure through the comparative hearing for a certain period of time. The Commission also wishes to explore the possibility of instituting a "finder's preference" for applicants successfully petitioning for a new allotment of a frequency. The Commission also asks interested parties to propose other new criteria for its consideration.

3. The Commission will also consider whether to modify the manner in which the resulting criteria are evaluated. The Commission believes that a point system may provide a basis for evaluating applicants that is more objective and rational than current practice. Use of such a system may expedite adjudication and provide results that are more certain and defensible. The point system contemplated involves: (1) Defining the weight of each preference in terms of an absolute number of "points", rather than in terms of relative adjectival preferences and demerits; (2) precisely defining the circumstances under which points are awarded under each criterion; and (3) providing a "tie-breaker" procedure for resolving cases in which no applicant receives a dispositive preference under the comparative criteria.

4. Although such proposals would substantially change the comparative selection process, the Commission believes that they can be fully reconciled with the "full hearing" requirement of 47 U.S.C. 309(e). The Commission also believes that its proposed action will not affect the weight given to minority or female ownership and therefore is fully consistent with the Congressional prohibition on reexamining minority and gender preference policies.

Initial Regulatory Flexibility Analysis**Reason for Action**

The Commission has determined that the comparative hearing process, which is currently used to select from among competing applicants for new broadcast facilities, is potentially out of date.

Objective

The Commission seeks to adopt a simplified hearing process to select new broadcast licensees on an expedited and more rational basis.

Legal Basis

Action is being taken pursuant to 47 U.S.C. 154 (i) and (j), 303(r), 309 (g) and (i), and 403.

Reporting, Record Keeping and Other Compliance Requirements

This proposal would reduce such requirements by eliminating and simplifying litigation involved in prosecuting a contested application for a new broadcast facility.

Federal Rules which Overlap, Duplicate or Conflict With the Proposed Rules

None.

Description, Potential Impact, and Number of Small Entities Affected

This proposal would benefit all entities seeking a license for a new broadcast facility by reducing the administrative burdens associated with the comparative hearing process.

Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objections

None.

List of Subjects for 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-9418 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-51; FCC 92-96]

Investment in the Broadcast Industry

AGENCY: Federal Communications Commission.

ACTION: Proposed rule and Notice of inquiry.

SUMMARY: The Commission, in this Notice of Proposed Rule Making and Notice of Inquiry seeks comment on

possible means for reducing unnecessary regulatory constraints on investment in the broadcast industry. The Commission has taken this action in order to increase and facilitate the availability of capital for investments in the broadcasting industry.

DATES: Comments are due on or before June 12, 1992, and reply comments are due on or before July 13, 1992.

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

FOR FURTHER INFORMATION CONTACT: Eugenia R. Hull, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Notice of Inquiry in MM Docket No. 92-51 adopted March 12, 1992, and released April 1, 1992. The complete text of this Notice of Proposed Rule Making and Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making and Notice of Inquiry

1. By this Notice of Proposed Rule Making and Notice of Inquiry ("Notice"), the Commission seeks comment on possible means for reducing unnecessary regulatory constraints on investment in the broadcast industry. Specifically, the Commission initiates this proceeding to seek comment on request by two parties concerning the treatment of widely held limited partnership interests under the Commission's ownership attribution rules. The Commission also seeks comment on requests by two other parties concerning the means by which creditors of broadcast licensees may secure their interests. In addition, the Commission raises, on its own motion, a number of other issues concerning various actions the Commission might take to foster the availability of capital in the broadcasting industry. The Commission especially seeks comment on whether there are financing mechanisms available in other industries that might be used effectively in the broadcasting industry, if appropriate changes in the Commission's regulatory program were implemented.

Notice of Proposed Rule Making

2. Attribution. The Commission's attribution criteria define what interests held in or relationships to media entities will be considered "cognizable" for purposes of applying the multiple ownership rules. Under existing standards, all non-voting stock interests (including most "preferred" stock classes) are generally not attributable. Any voting stock interest of 5 percent or more is generally considered attributable. There are several exceptions to the presumption of attribution created by this 5 percent benchmark. Most notable among these for present purposes is the "passive" investor exception, under which a defined class of institutional investors may hold up to 10 percent of a company's voting stock interest without incurring attribution. The Commission considers three types of entities to be "passive" for this purpose: (1) Investment companies, (2) insurance companies, and (3) bank trust departments.

3. The Commission believes that relaxation of all or some of these aspects of its attribution rules may substantially benefit the broadcast and cable industries by affording them access to new sources of capital as well as making available increased investment from existing capital providers. In this Notice, the Commission seeks comment on three specific proposals concerning stock interests. First, the Commission proposes to raise the basic attribution benchmark from 5 percent to 10 percent, thereby doubling the permissible level of investment which the typical non-institutional investor could provide without fear of conflict with the multiple ownership rules. Second, the Commission proposes to increase the existing attribution benchmark for passive institutional investors from 10 percent to 20 percent. The Commission notes in this regard that licensees are required to certify that no passive investor "has exerted or attempted to exert any influence or control over any of the affairs of the licensee." The Commission would retain this requirement. Third, the Commission proposes to broaden the class of investors eligible for passive institutional status and therefore eligible to use the higher attribution benchmark. Specially, the Commission seeks comment on affording Small Business and Minority Enterprise Small Business Investment Companies (SBICs and MESBICs) such status.

4. Commenters are expressly invited to submit variations on or alternatives to these proposals. Commenters presenting variant approaches should address the ways in which their proposal will advance the Commission's goal of increasing the flexibility of capital sources in media markets while adequately identifying influential ownership and positional interests in the application of its ownership rules. However, the Commission will not consider any changes in the attribution rules to the extent such changes fall within the scope of newspaper-television cross ownership prohibition found in § 3555(c) of the Commission's Rules.

5. Under the Commission's ownership attribution rules, all partners in a general partnership, regardless of equity interests, are attributed with ownership. The rules with regard to limited partnerships establish certain criteria to be applied in determining whether limited partners are sufficiently insulated from "material involvement" in the management or operation of the partnership's media related activities to be exempt from attribution.

6. Currently pending before the Commission are two Petitions seeking Declaratory Ruling regarding application of the attribution rules to limited partnership interests, one by Kagan Media Partners and the other by Equitable Capital Management Corporation. In essence, these Petitions seek exemptions from the Commission's attribution criteria for "business development companies" organized as limited partnerships.

7. The Commission believes that the strict application of its current attribution criteria to "business development companies" may impede the ability of these limited partnerships to make capital investments in broadcast entities and to attract a large pool of limited partners. Therefore, the Commission proposes to modify its insulation criteria as it applies to these widely-held limited partnerships, so as to eliminate as much as possible the current conflict with federal and state securities laws. Alternatively, the Commission could combine an equity ownership standard specific to these partnerships with a more limited relaxation of specific insulation requirements. The Commission seeks comment on whether this accommodation of its attribution rules is necessary to facilitate the ability of these types of limited partnerships to invest capital in the broadcast industry.

8. The Commission also requests comment on whether its attribution criteria for all widely-held limited partnerships should be modified to

recognize insulation where limited partners hold an insignificant percentage of the total equity in the partnership. The Commission seeks comment on what attributes of a limited partnership should indicate to the Commission that a requisite degree of insulation exists to permit limited partners to be treated similarly to minority stockholders in a corporation. The Commission also seeks information on whether there are particular types of partnerships that have consistent characteristics that would permit such an analysis as a matter of course, without case-by-case analysis. The Commission requests comment on whether the 5 percent voting stock threshold or some other percent of equity ownership in a widely-held limited partnership would be appropriate where these identified attributes exist. The Commission further requests comment as to whether it should distinguish widely-held partnerships from other types of partnerships and, if so, what criteria should define "widely-held."

9. Security and reversionary interests. Also pending before the Commission are two Petitions for Declaratory Ruling that raise issues concerning the ability of creditors to take either a limited security interest or a reversionary interest in an FCC broadcast license. The law firm of Hogan & Hartson filed a Petition requesting that the Commission permit third party creditors to obtain security interests in the license of a broadcast station. Foreclosure on such interests would be subject to prior Commission approval. In addition, the law firm of Crowell & Moring filed a Petition asking the Commission to clarify § 73.1150 of its rules by defining the phrases "right of reversion" so as to allow a seller for a broadcast station to regain control of the license, subject to prior Commission approval.

10. Petitioners' proposals raise serious concerns. The Commission must begin by examining the requirements and possible limitations of the Communications Act. The Commission must also assess the costs and other potential disadvantages of changing its rules, and weigh those against the anticipated benefits. Accordingly, the Commission seeks additional comment on both the statutory and policy implications of the Petitions before it.

11. The Commission historically has taken the view that its rule prohibiting sellers from retaining a reversionary interest and its policy prohibiting third party security interests were based upon statutory provisions prohibiting the grant of ownership interests in the spectrum and the assignment by

licensees of their interests in a license without prior Commission approval. The Commission seeks comment on whether the Communications Act prohibits security or reversionary interests in licenses *per se*. Commenters are also asked to address what implications a conclusion that the Communications Act does not preclude such interests may have under commercial transactions laws such as the Uniform Commercial Code.

12. The Commission has a number of fundamental policy concerns that must be weighed in deciding whether to permit security or reversionary interests in broadcast licenses. First, the Commission questions whether granting such interests would be effective in increasing capital availability, and the Commission seeks specific comment assessing the likelihood of such an increase. The Commission also asks whether other financing arrangements might be disturbed. Second, the Commission is concerned that the independence of stations be maintained if security interests are permitted. Thus, the Commission seeks comment on the effect that holding a security or reversionary interest in a license may have on the likelihood that creditors will attempt to exercise control or have substantial influence over a borrower station. Is there a greater likelihood of entanglement between the creditor and licensee where the lender is the former licensee of the subject station? Third, the Commission asks whether safeguards will be necessary to ensure that transfers of control do not take place without the Commission's prior approval, as required by the Communications Act. Fourth, the Commission questions whether allowing security interests will discourage lenders from helping stations work past temporary financial difficulties. Finally, the Commission seeks comment on the applicability of any action taken in this proceeding to existing contracts. The Commission requests comment on each of these areas of concern.

Notice of Inquiry

13. In conjunction with the Commission's interest in reducing regulatory burdens on investment in broadcasting, the Commission seeks comment on whether alteration of other Commission rules or processes might enable enterprises to raise capital more effectively or at less expense. In this regard, the Commission asks commenters whether it is possible, through regulatory reform, to reduce certain risks associated with debt instruments in the broadcasting industry

by enhancing the liquidity and marketability of these securities for potential investors without undermining the Commission's public policy or regulatory goals. In particular, the Commission seeks comment on whether standardized debt pooling mechanisms could facilitate access to capital by broadcasters, similar to arrangements established in venture capital funds or student loan, insurance and mortgage packages. Commenters should address whether there are fundamental characteristics that would distinguish other debt pooling mechanisms from debt packaging arrangements in broadcasting, thus limiting the viability or marketability of the broadcasting package. In addition, the Commission seeks broad-ranging comment regarding any additional steps that the Commission could pursue in order to facilitate access by broadcasters to capital markets.

Initial Regulatory Flexibility Analysis

14. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

I. Reason for the Action

The purpose of this notice is to consider proposals for changes to the Commission's rules and policies which impact the availability of capital for investment in the broadcasting industry.

II. Objective of this Action

This action is intended to determine whether, and if so, in what circumstances, Commission policy might be changed, consistent with statutory mandates, to reduce government regulation on investment in the broadcast industry.

III. Legal Basis

Authority for the actions proposed in this Notice may be found in sections 4

and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule

None.

V. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

VI. Description, Potential Impact and Number of Small Entities Involved

Approximately 10,000 existing broadcasters of all sizes and an unknown number of potential broadcasters may be affected by the proposals contained in this Notice. In addition, an unknown number of financial institutions may be affected.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

The purpose of this Notice is to seek comment on issues regarding the concerns raised in the Petitions, including alternatives that would minimize the impact on small entities.

Ex Parte Rules—Non-Restricted Proceeding

15. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 12, 1992, and reply comments on or before July 13, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Lists of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.
Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 92-9417 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-87, RM-7963]

Radio Broadcasting Services; Jonesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of TM Jonesboro, Inc., licensee of Station KDEZ(FM), Jonesboro, Arkansas, seeking the substitution of FM Channel 263C2 for Channel 262A and modification of its license accordingly. Coordinates for this proposal are 35-54-35 and 90-42-10.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 263C2 at Jonesboro, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before June 8, 1992, and reply comments on or before June 23, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence Roberts and Mark N. Lipp, Esqs., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue NW., suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-87, adopted April 8, 1992, and released April 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the 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 contractors, Downtown Copy

Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-9422 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-86, RM-7961]

Radio Broadcasting Services; Paradise and Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Paradise Broadcasting, Inc., licensee of Station KZZP(FM), Channel 244A, Paradise, California, seeking the substitution of Channel 244B1 for Channel 244A and modification of the license for Station KZZP(FM) accordingly. In order to accommodate its request, petitioner also seeks the substitution of Channel 228B for Channel 244B at Fort Bragg, California, and modification of the license for Station KLLK-FM. Petitioner's modification proposal for Station KZZP(FM) complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 244B1 at Paradise, or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates used for Channel 244B1 at Paradise are 39-57-29 and 121-42-50, and for Channel 228B at Fort Bragg, 39-27-53 and 123-45-27.

DATES: Comments must be filed on or before June 8, 1992, and reply comments on or before June 23, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robb Cheal, Paradise Broadcasting, Inc., 407 West 9th Street, Chico, CA 95928.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-86, adopted April 8, 1992, and released April 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the 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 contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-9423 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-85, RM-7959]

Radio Broadcasting Services; Hampton and Parkersburg, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by John Linder, permittee of a new FM station on Channel 255A at Hampton, Iowa. Petitioner seeks the reallocation of

Channel 255A from Hampton to Parkersburg, Iowa, and the modification of his construction permit (BPH-910219MK) to specify Parkersburg as the station's community of license. Channel 255A can be allotted to Parkersburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.5 kilometers (8.4 miles) west to accommodate petitioner's desired transmitter site, at coordinates North Latitude 42-35-20 and West Longitude 92-57-00. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 255A at Parkersburg.

DATES: Comments must be filed on or before June 8, 1992, and reply comments on or before June 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-85, adopted April 8, 1992, and released April 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the 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, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permission *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-9424 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-88, RM-7962]

Radio Broadcasting Services; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Staradio Corp. proposing the substitution of Channel 233C for Channel 233C1 at Great Falls, Montana, and modification of the construction permit for Station KMON-FM to specify operation on the higher class channel. Canadian concurrence will be requested for the allotment of Channel 233C at coordinates 47-09-34 and 111-00-39. We shall propose to modify the construction permit for Station KMON-FM to specify operation on Channel 233C in accordance with Section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 8, 1992, and reply comments on or before June 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Alan E. Aronowitz, Baraff, Koerner, Olender & Hochberg, P.C., 5335 Wisconsin Avenue NW., suite 300, Washington, DC 20015-2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-88, adopted April 8, 1992, and released April 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the 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 contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-9421 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-83, RM-7946]

Radio Broadcasting Services; Jewett, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule

SUMMARY: The Commission requests comments on a petition filed by Alexander Kmets seeking the allotment of Channel 250A to Jewett, New York, as the community's first local aural transmission service. Channel 250A can be allotted to Jewett in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) north to avoid short-spacings to Station WCZX, Channel 249A, Hyde Park, New York, and Station WSKQ, Channel 250B, New York, New York, at coordinates North Latitude 42-19-56 and West Longitude 74-18-45. Canadian concurrence is required because Jewett is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before June 8, 1992, and reply comments on or before June 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alexander Kmets, 282 Devoe Avenue, Yonkers, New York 10705 (Petitioner).

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-83, adopted April 7, 1992, and released April 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the 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, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-9408 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 462]

Exemption of Demurrage From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Staggers Rail Act of 1980, which directs the Commission to exempt rail carriers from regulation when it finds that such action meets the criteria of 49 U.S.C. 10505(a), the Commission is issuing a notice of proposed rulemaking to exempt demurrage, under section 10505, from all applicable regulation but to retain jurisdiction over the first 24 hours for loading and the first 48 hours for unloading, as is currently the case under the National Freight Tariff PHJ 6004-Series. The Commission believes that exempting demurrage subject to this limitation constitutes the best means to achieve the goals of the Staggers Act as they concern demurrage, while safeguarding the interests of shippers and receivers subject to market dominant carriers. The Commission solicits comments on this proposal and on two alternative approaches. The alternatives involve (1) exempting demurrage from all applicable regulation while retaining jurisdiction to consider demurrage charges in maximum reasonable rate cases, and (2) eliminating antitrust immunity for the collective consideration of demurrage charges.

DATES: Comments are due May 22, 1992.

ADDRESSES: An original and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from the Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

The effect of this proceeding on matters related to energy, environment, and small business entities also should be addressed in the comments.

Decided: April 15, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-9407 Filed 4-21-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Timber Rattlesnake as Endangered and To Designate Critical Habitat**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the 90-day finding on a pending petition to add the timber rattlesnake, *Crotalus horridus*, to the Lists of Endangered and Threatened Wildlife and Plants. It is the finding of the Service that the petition does not present substantial information indicating that the requested actions may be warranted.

DATES: The finding in this notice was made in January 1992. Comments and information may be submitted until further notice.

ADDRESSES: Comments and materials concerning this petition should be sent to U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. The petition, finding and supporting data are available for public inspection, by appointment, during normal business hours that the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart at the above address.

SUPPLEMENTARY INFORMATION:**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the *Federal Register*. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service received a petition on September 19, 1991, from the Biodiversity Legal Foundation and Mr. Andrew Weisburd requesting the Service to list the timber rattlesnake, *Crotalus horridus*, as an endangered species throughout its historic range and to designate critical habitat. The petition summarizes information for 31 States and 2 Canadian provinces within the

historic range for this species. It claims the species is in decline throughout its range and endangered by collecting and habitat destruction. Information for the petition was collected from non-game managers, reptile biologists at State wildlife agencies, and from private herpetologists. The Service also sought additional information through a review of the available literature and contacts with knowledgeable individuals.

The species historically occurred in 34 States and 2 Canadian provinces. The petition fails to discuss Arkansas, Kansas, and Wisconsin, although the supporting data includes correspondence from these States. Of the 31 States specifically enumerated in the petition, population status information was provided for only about one-third, and for many of these States there is very little documentation on population trends or the magnitude of threat. Supporting documentation provided with the petition, whether in the form of reports, letters, or personal communication, is summarized below.

Canada—The petition considers this species to be extinct in Canada, yet the supporting information (Martin 1982) states that unconfirmed rumors of rattlesnakes from Quebec persist.

Arkansas—A letter from the Arkansas Game and Fish Commission refers the petitioner to Dr. Stan Trauth, Arkansas State University, Jonesboro, Arkansas for information on this species. If Dr. Trauth was contacted for information, there is no documentation with the petition. Informal contacts conducted by the Service in connection with Dr. Trauth's work indicate the species does not face any significant problems in Arkansas at this time.

Connecticut—According to a personal communication by the petitioners with W.H. Martin in 1989, Connecticut has 8 rattlesnake populations with a total population of 600 to 700 individuals.

Delaware—Based on personal communication with W.H. Martin, the species is believed to be extirpated from this State.

Illinois—A species' account from the Illinois Natural History Survey Bulletin (1961) provides general distribution and a listing of undocumented records of occurrence. The range is shown as the lower one-third of Illinois and the area along the Mississippi River. Service contacts indicate the species has declined state-wide due to persecution, exploitation and habitat loss.

Indiana—The petitioner indicated that the Nature Conservancy considers the species to be imperiled at the state level because of rarity, but no other documentation was provided. Service

contacts indicate the species has declined state-wide due to persecution, exploitation and habitat loss, and that the State will list the species as endangered in 1992. The State listing will prohibit commercial exploitation.

Iowa—A letter from the Iowa Department of Natural Resources gives general information on range without any numbers or other data. Service contacts indicate a decline due to persecution, exploitation and habitat loss, but the species does not appear to be in serious trouble.

Kansas—A letter from the University of Kansas refers to some museum records as an enclosure, but they were not included with the petition.

Maine—Based on personal communication with W.H. Martin, the species has been extirpated from this State.

Massachusetts—The Massachusetts Natural Heritage Program document submitted in support of this petition acknowledges this species in need of protection, yet states " * * the rattlers are hanging in, just about exactly where they were in 1925." Another document from the Massachusetts Natural Heritage Program documents 6 widely scattered populations of the timber rattlesnake that have been verified since 1978 with no comment on efforts to verify the other 15 known historic occurrences.

Minnesota—Documentation from Minnesota states the timber rattlesnake is common and abundant in some localities and declining elsewhere within its limited range, but gives no population data. Service contacts indicate a general decline and that the State considers the species to be of special concern.

Missouri—While the petitioner presents no documentation for the species' status in Missouri, Service contacts indicate a decline, although the decline has not been sufficient to trigger a State listing of the species.

New Hampshire—It is uncertain if the timber rattlesnake still occurs in New Hampshire (Taylor, *in litt.*, 1989).

New Jersey—A publication on rattlesnakes in New Jersey (Reinert and Zappalorti 1988) discusses movement patterns and habitat preference rather than providing data on population status.

New York—The petitioners provided a paper by Brown (1988) that indicates a decline in New York. The species has been classified as threatened by the

New York State Department of Environmental Conservation since 1983.

North Carolina—Information from North Carolina (Palmer 1974) indicates the species has been extirpated from some areas of the piedmont, yet is still widespread across the State. Neither the petitioners nor the document from North Carolina provides any data to support that statement. A letter from the North Carolina State Museum of Natural History (1989) states that information on the current status is incomplete but that it is generally believed to be declining.

Ohio—By letter, the Ohio Department of Natural Resources (Case 1989) states that very little recent information on the species is available. A second letter from this same agency (Rice 1989) states that data on this species is spotty and incomplete. More recent Service contacts indicate a significant decline, and that the State plans to list the species as endangered.

Pennsylvania—In Pennsylvania, the timber rattlesnake is considered abundant by some researchers and in sharp decline by others. The number of rattlesnakes captured during snake rodeos in Pennsylvania has decreased and is attributed by at least one author to be the result of the daily bag limit of two snakes imposed by Pennsylvania. Martin et al. (1990) estimate the timber rattlesnake population in Pennsylvania to range from 60,000 to 90,000 on the basis of 30 snakes per den and an estimate of 2,000 to 3,000 dens. This represents a reduction of about 70 percent from the estimates for historic populations.

Rhode Island—The species is believed to be extirpated from Rhode Island (apparently based on information from W.H. Martin).

Texas—A U.S. Forest Service forester provided observations on populations in Texas without any data. A range map for the timber rattlesnake in Texas was enclosed and indicated a scattered range over east Texas.

Virginia—In Virginia (Buhlmann, Virginia Natural Heritage Program, *in litt.*, 1989) the timber rattlesnake is still abundant in many areas while declining in the southeastern coastal plain. No specific studies are cited as documentation.

West Virginia—A document from West Virginia provided by the petitioners indicates that rattlesnake populations in remote areas have remained relatively stable over the past 23 years unless they received pressure from snake hunters. In the latter case,

the populations declined to about half of their former numbers.

Wisconsin—The only correspondence submitted from Wisconsin was a request for more information from one of the petitioners before locality data would be released. Service contacts indicate that the species is declining in some areas and that the State considers it to be a species of special concern.

The general theme of the petition and supporting comments is that the species has declined, a situation which the Service recognizes as being true for most species that retreat from areas of human activity. Even so, the timber rattlesnake has a very wide range and, while populations may have decreased, and even become extirpated from some areas, the species still persists throughout most of its range.

The Service has determined that this petition does not present substantial information indicating that the action requested may be warranted. The Service will remain interested in any additional information about population trends for this species as it may become available.

References Cited

- Brown, W.S. 1988. Timber rattlesnake: background information for protection as a threatened species in New York State. N.Y. Herp. Newsletter, No 115, May/June.
- Martin, W.H. 1982. The timber rattlesnake in the northeast; its range, past and present. Bull. N.Y. Herp. Soc., vol. 15, No. 1.
- Palmer, W.M. 1974. Poisonous snakes of North Carolina. State Mus. of Nat Hist., N.C. Dept. Ag., Raleigh.
- Reinert, H.K., and R.T. Zappalorti. 1988. Timber rattlesnakes (*Crotalus horridus*) of the Pine Barrens; their movement patterns and habitat preference. Copeia (4):964-978.
- Smith, P.W. 1961. The amphibians and reptiles of Illinois. Ill. Nat. Hist. Sur. Bull., Vol. 28, Article 1.

Author

This notice was prepared by Mr. James Stewart (see ADDRESSES section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

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

Dated: April 6, 1992.

Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 92-9394 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 57, No. 78

Wednesday, April 22, 1992

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

Animal and Plant Health Inspection Service

[Docket No. 92-052]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that eight environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality

of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced in the United States. The regulations set

forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
91-329-01.....	Calgene, Incorporated.....	3-6-92	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Burleson County, Texas.
91-329-02.....	Calgene, Incorporated.....	3-6-92	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Desha and Lee Counties, Arkansas; Tensas Parish, Louisiana; Pemiscot County, Missouri; Burleson County, Texas.
91-329-04.....	Calgene, Incorporated.....	3-6-92	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Wayne County, North Carolina.
91-326-03.....	Monsanto Agricultural Company.	3-13-92	Tomato plants genetically engineered to express a gene that modifies the ripening process.	Lee County, Florida.
91-352-03.....	Frito-Lay, Incorporated.....	3-17-92	Potato plants genetically engineered to express resistance to potato virus Y (PVY).	Oneida County, Wisconsin.
91-324-03.....	Frito-Lay, Incorporated.....	3-19-92	Potato plants genetically engineered to express a chitinase gene for resistance to <i>Rhizoctonia solani</i> .	Oneida County, Wisconsin.
91-326-02.....	Frito-Lay, Incorporated.....	3-19-92	Potato plants genetically engineered to express a coat protein of potato leaf roll virus (PLRV) for resistance to PLRV.	Oneida County, Wisconsin.

Permit No.	Permittee	Date issued	Organisms	Field test location
91-329-03	Calgene, Incorporated	3-20-92	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Limestone County, Alabama; Sumter County, Georgia; Washington County, Mississippi; Pickens County, South Carolina; Gibson County, Tennessee.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 16th day of April 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-9301 Filed 4-21-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-047]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection

Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

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) into 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, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
92-080-01, renewal of permit 90-360-01, issued on 4-24-91.	University of Idaho	3-20-92	Potato plants genetically engineered to express an insect antibacterial gene.	Bingham County, Idaho.
92-080-02, renewal of permit 91-077-01, issued on 6-18-91.	Harris Moran Seed Company.	3-20-92	Cantaloupe plants genetically engineered to express the coat protein gene of cucumber mosaic virus (CMV) for resistance to CMV.	Yolo County, California.
92-080-03, renewal of permit 91-052-02, issued on 6-18-91.	Montana State University.	3-20-92	Potato plants genetically engineered to express a cecropin B analog gene for resistance to potato ring rot bacteria, bacterial soft rot, and common scab.	Gallatin and Lake Counties, Montana.
92-080-04, renewal of permit 91-074-01, issued on 6-15-91.	Upjohn Company	3-20-92	Corn plants genetically engineered to express tolerance to the herbicide glufosinate.	Kalamazoo County, Michigan.
92-080-05	Cargill Hybrid Seeds	3-20-92	Corn plants genetically engineered to express tolerance to the herbicide glufosinate.	Kane County, Illinois.
92-084-01, renewal of permit 91-039-01, issued on 5-22-91.	U.S. Department of Agriculture, Agricultural Research Service.	3-24-92	Potato plants genetically engineered to express a marker gene.	Bingham County, Idaho.

Done in Washington, DC, this 16th day of April 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-9300 Filed 4-21-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-053]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain

genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR 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) into 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, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-090-01.....	Upjohn Company	03-30-92	Soybean plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to the herbicide bialaphos.	Kalamazoo County, Michigan.
92-090-02.....	Monsanto Agricultural Company.	03-30-92	Potato plants genetically engineered to express the coat protein genes of potato viruses X (PVX) and Y (PVY) for resistance to PVX and PVY.	Benton County, Washington.
92-090-03.....	Upjohn Company	03-30-92	Tomato plants genetically engineered to express the coat protein genes of tobacco mosaic virus (TMV) and/or cucumber mosaic virus (CMV) for resistance to TMV and/or CMV.	Kalamazoo County, Michigan.

Done in Washington, DC, this 16th day of April 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-9302 Filed 4-21-92; 8:45 am]

BILLING CODE 3410-34-M

Foreign Agricultural Service

Topics Discussed in FY 1991 by the Agricultural Advisory Committees for Trade

AGENCY: Foreign Agricultural Service.

ACTION: Notice.

SUMMARY: This notice is provided in order to notify the public of activities of the Agricultural Policy Advisory Committee (APAC) for Trade and the ten Agricultural Technical Advisory Committees (ATACs) for Trade as required by section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.). The advice received from the committees during fiscal year 1991 concerned an array of agricultural trade issues.

Pursuant to the Trade Act of 1974, as amended, the committees received information and briefings from USDA and the Office of the United States Trade Representative's (USTR) staff on the various trade agreements to which the United States is a signatory—i.e., the

U.S.-Canada Free Trade Agreement—and those currently under negotiation or that the United States plans to enter—i.e., the Uruguay Round of Multilateral Trade Negotiations (MTN) and the North American Free Trade Agreement (NAFTA).

Discussions of the committees concentrated on developments related to the preparation and tabling of U.S. negotiating proposals on domestic and international trade reforms; proposals on issues such as export subsidies, internal supports, market access, import licensing, intellectual property rights, sanitary and phytosanitary regulations, and environmental concerns. The committees also examined and commented on proposals made by other countries and/or government officials, such as the chairman of the Agricultural Negotiating Group for the MTN.

Other trade issues which were discussed included the reduction of tariffs between the United States and Mexico, and within the General Agreement on Tariffs and Trade; European Community meat import and export restrictions including health and slaughter issues; European Community (EC) sanitary and phyto-sanitary regulations; a General Agreement on Tariffs and Trade (GATT) case concerning EC oilseed policy; the Long-Term Agricultural Trade Strategy; rules of origin determinations; the Japanese peanut quota; provisions within the

Food, Agriculture, Conservation and Trade (FACT) Act of 1990; egg and chicken product sales to Hong Kong; environmental packaging requirements and proposals in the European Community; sugar import quotas; tobacco trade with Turkey; and tobacco trade from Cuba.

* * * * *

Issued at Washington, DC this 16th day of April, 1992.

Duane Acker,

Administrator, Foreign Agricultural Service.

[FR Doc. 92-9371 Filed 4-21-92; 8:45 am]

BILLING CODE 3410-10-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4 p.m. on May 14, 1992 at the Seattle Hilton Airport, 17620 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to review current civil rights development in the State, and plan future project activities.

Persons desiring additional information, or planning a presentation

to the Committee, should contact Advisory Committee Chairperson, Sharon Bumala or Philip Montex, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC April 14, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-9267 Filed 4-21-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee; Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, room LM133, Madison Building, 1st and Independence Avenues, SE., Washington, DC 20540.

Department of Commerce, Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230, Telephone (202) 377-4115.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1991 of 42 committees and their subcommittees, the names of which are listed below:

Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992.

Automated Manufacturing Equipment Technical Advisory Committee.

Board of Overseers of the Malcolm Baldrige National Quality Award.

Committee of Chairs of Industry Advisory Committees for Trade Policy Matters (TPM).

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee.

Computer System Security and Privacy Advisory Board.

Computer Systems Technical Advisory Committee.

Electronic Instrumentation Technical Advisory Committee.

Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for Trade Policy Matters (TPM).

—Military Trade Subcommittee.

—Subcommittee on Space.

—Subcommittee on Finance.

ISAC on Building Products and Other Materials for TPM.

ISAC on Capital Goods for TPM.

ISAC on Chemicals and Allied Products for TPM.

ISAC on Consumer Goods for TPM.

—North American Free Trade Agreement (NAFTA) Task Force.

ISAC on Electronics and Instrumentation for TPM.

ISAC on Energy for TPM.

ISAC on Ferrous Ores and Metals for TPM.

ISAC on Footwear, Leather, and Leather Products for TPM.

ISAC on Lumber and Wood Products for TPM.

ISAC on Nonferrous Ores and Metals for TPM.

ISAC on Paper and Paper Products for TPM.

ISAC on Services for TPM.

ISAC on Small and Minority Business for TPM.

ISAC on Textiles and Apparel for TPM.

ISAC on Transportation, Construction, and Agricultural Equipment for TPM.

ISAC on Wholesaling and Retailing for TPM.

Importers and Retailers' Textile Advisory Committee.

Industry Functional Advisory Committee on Customs Matters for TPM.

Industry Functional Advisory Committee on Intellectual Property Rights for TPM.

Industry Functional Advisory Committee on Standards for TPM.

—Subcommittee on Conformity Assessment.

—Subcommittee on Standards.

Industry Policy Advisory Committee for Trade Policy Matters.

—Task Force on the North American Free Trade Agreement (NAFTA).

Judges Panel of the Malcolm Baldrige National Quality Award.

Management-Labor Textile Advisory Committee.

Materials Technical Advisory Committee.

Militarily Critical Technologies List

Technical Advisory Committee..

National Medal of Technology

Nomination Evaluation Committee.

President's Export Council.

—Foreign Market Development Subcommittee.

—Executive Subcommittee.

Semiconductor Technical Advisory Committee.

Subcommittee on Export Administration.

Telecommunications Equipment

Technical Advisory Committee.

Transportation and Related Equipment Technical Advisory Committee.

U.S. Automotive Parts Advisory Committee.

Visiting Committee on Advanced Technology.

FOR FURTHER INFORMATION CONTACT:

Jan Jivatode, Program Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-4115.

Dated: April 7, 1992.

Jan Jivatode,

Management Support Division, Office of Federal Assistance and Management Support.

[FR Doc. 92-9286 Filed 4-21-92; 8:45 am]

BILLING CODE 3510-FA-M

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009. The meeting will convene on Friday, May 29, 1992, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and eight *ex officio* members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective

from the standpoint of the outside user community on how proposed designs for the year 2000 Census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 9:30 a.m. and adjourn at 4:30 p.m. on Friday, May 29, 1992.

ADDRESSES: The meeting will take place at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Office of the Under Secretary, Economics and Statistics Administration, Department of Commerce, room 4838, Herbert C. Hoover Building, Washington, DC 20230. Telephone: (202) 377-3709.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include consideration of possible criteria to use in evaluating design features and options for the 2000 census, preliminary results of the short form questionnaire test, and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named below at least three working days prior to the meeting.

Dated: April 16, 1992.

Mark W. Plant,

Acting Under Secretary and Acting Administrator Economics and Statistics Administration.

[FR Doc. 92-9398 Filed 4-21-92; 8:45 am]

BILLING CODE 3510-EA-M

National Institute of Standards and Technology

[Docket No. 920 115-2015]

Continuation of Fire Research Grants Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; Announcing continuation of fire research grants program.

SUMMARY: The purpose of this notice is to inform potential applicants that the

Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the *Federal Register* on February 20, 1991 (46 FR 13250, November 19, 1984 (49 FR 45636), May 6, 1986 (51 FR 16730), June 5, 1987 (52 FR 21342), June 6, 1988 (53 FR 20675), May 31, 1989 (54 FR 23243), July 23, 1990 (FR 90-17041) and May 7, 1991 (FR 91-10717). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

CLOSING DATE FOR APPLICATIONS: None.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 (Rev. 4-88) as reference under the provision of OMB Circular A-110 to: Building and Fire Research Laboratory, Attn: Sonya Cherry, National Institute of Standards and Technology 20899.

FOR FURTHER INFORMATION CONTACT: Sonya Cherry, (301) 975-6854.

ELIGIBILITY: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately \$1.5 million per fiscal year. No increase in funds has taken place. The Fire Research Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

(a) Fire Safety Engineering Group

Develop separated and assembled fire protection analytical (computerized) tools and transfers them to practicing professionals. Uses these tools to

analyze and recreate significant fires and to evaluate preventive measures for the future.

(b) Building Fire Physics

Develop models and techniques for their application for predicting the fire development and smoke transport in buildings. Develops methods of evaluating and predicting the performance of interactions between building fire safety design features and devices such as vents, sprinklers, and smoke control systems.

(c) Combustion and Flammability

Develop fundamental understanding of the mechanisms which control the ignition, flame spread, and the burning rate of many types of materials including charring and non-charring polymers and composites.

(d) Fire Dynamics

Develop algorithms for predicting burning and spread rates within enclosures. This includes understanding the processes involved and developing methods of measuring and predicting the fire involvement of building components such as walls, floors and ceilings and the ignition and burning rate of furniture.

(e) Smoke Dynamics Research

Produce scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and predicting general fire phenomena. This includes determining the effects of within-flame and post-flame fluid mechanics on the formation and emission of smoke, including particulates, aerosols, and combustion gases; developing and integrated mechanistic pathway for soot from chemical inception to post-flame agglomerates; developing calculation methods for the prediction of the yields of CO (and eventually other toxicants) as a function of fuel type, availability of air, and fire scale.

(f) Exploratory Fire Technologies

Develop the science for the identification and in-situ measurement of the symptoms of a pending fire, as well as the characteristics of a nascent fire. This includes chemically and physically characterizing the leading ignition sequences; measuring fires at their onset, searching for electromagnetic, material or acoustic emissions that are unique; developing or adapting monitors for these variables; and creating the intelligence and control

strategies for using these data to select the proper response in sufficient time to minimize losses.

(g) Fire Hazard Analysis

Develop analytical systems for the quantitative prediction of the threats to people and property from fires and the means to assess the accuracy of those methods. This includes creating advanced, usable models for the calculation of the outcome of fires; developing a protocol for determining the accuracy of complex computer models; deriving criteria for, a prototype of, and an institutional plan for a database for fire model input; and identifying proper conditions for accurate bench-scale generation of smoke and the measurement of its toxicity.

(h) Fire Suppression Research

Develop understanding of fire extinguishment processes and derive techniques to measure and predict the performance of fire protection and fire fighting systems; develop techniques to predict and measure the behavior and impact of large fires. This includes determining the mechanism of and an algorithm for the suppression of fires by water sprays; developing performance criteria for flame suppression by advanced agents; creating a protocol for verifying the effectiveness of suppression system design; developing field measurement techniques for large fires and their plumes; and performing research on the use of combustion for environmental cleanup.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the eight programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Deputy Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NIST, the Building and Fire Research Laboratory, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

Rationality..... 0-20
Qualification of Technical Personnel..... 0-20

Resources Availability..... 0-20
Technical Merit of Contribution..... 0-40

The results of these evaluations are transmitted to the Group Leader of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments and makes a recommendation. The Building and Fire Research Laboratory head will also consider compatibility with programmatic goals and financial feasibility.

Paperwork Reduction Act

The standard forms, 424, 424A and 424B referenced in this notice are subject to the Paperwork Reduction Act and are cleared under Office of Management and Budget (OMB) control numbers 0348-0043, 0348-0044 and 0348-0040.

Additional Requirements

All applicants must submit a certificate ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F.

Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

15 CFR part 28 is applicable for awards exceeding \$100,000 and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or cooperative agreement. A "Certification Regarding Lobbying" and the SF-LLL, "Disclosure of Lobbying Activities" is required for awards exceeding \$100,000.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Applicants should be aware that all awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Administrative Information

Contact: Grants Office, Office of Acquisition and Assistance Division, Building 301/rm. B128, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-6328.

Dated: April 16, 1992.

John W. Lyons,
Director.

[FR Doc. 92-9369 Filed 4-21-92; 8:45 am]

BILLING CODE 3510-13-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc., Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Exchange, Inc., (COMEX or Exchange) has applied for designation as a contract market in Eurotop 100 stock index futures and futures options. On February 4, 1992, the Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, previously published in the *Federal Register* these proposals for public comment. 57 FR 4190.

By letter dated April 16, 1992, COMEX requested an extension of the comment period in order to ensure that all interested persons have an opportunity to submit meaningful comments. The Deputy Director of the Division, acting pursuant to Commission Regulations § 140.96, has determined to grant a 21-day extension of the comment period.

DATES: Comments must be received on or before May 13, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the Eurotop 100 stock index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the

proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the COMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR part 145 and § 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and § 145.8.

Issued in Washington, DC, on April 17, 1992.

J. Blake Imel,
Deputy Director.

[FR Doc. 92-9459 Filed 4-21-92; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Household Use of Cigarettes

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of households about use of cigarettes. The requested expiration date is February 28, 1993.

The Fire Safe Cigarette Act of 1990 (15 U.S.C. 2054n) directs the Consumer Product Safety Commission and Federal agencies to conduct research to assess the practicability of developing a cigarette with reduced propensity to ignite upholstered furniture and mattresses. That act directs the Consumer Product Safety Commission to conduct a study of the characteristics of cigarettes, products ignited, and smokers involved in fires.

In 1987, the Commission conducted a pilot fire incident study to determine the relative risk of fire associated with

different types of cigarettes in nine communities in the United States. In this study, significant differences were observed between the kinds of cigarettes involved in fires and the kinds of cigarettes smoked by the population as a whole. However, no data were collected concerning the various kinds of cigarettes smoked in the specific communities in which the 1987 fire incident study was conducted.

The Commission proposes to survey 1,500 households in the nine communities surveyed in 1987 to obtain information about the types of cigarettes smoked by consumers in those communities. The Commission will use the information obtained from this survey to complete the study of the characteristics of cigarettes, products ignited, and smokers involved in fires specified by the Fire Safety Cigarette Act of 1990. The Commission will transmit the completed study to Congress in the reports required by that act.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Cigarette Safety Exposure Survey.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Persons living in households.

Total number of respondents: 1,500.

Hours per response: 0.05

Total hours for all respondents: 75.

Comments: Comments about this request for approval of a collection of information should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: April 17, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-9416 Filed 4-21-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice.

SUMMARY: Working Group One of the DoD Advisory Panel on Streamlining and Codifying Acquisition Laws is offering the first segmented of the proposed socio-economic laws for public study and comment. The laws include various labor statutes, definitions of commercial companies, products and services, and small purchase thresholds.

For further information contact Lt. Commander Ben Capshaw at (703) 355-2682.

Dated: April 17, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-9382 Filed 4-21-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 6-8 May 1992.

Time: 0800-1700 hours daily.

Place: Ft McPherson, GA/MacDill AFT, FL.

AGENDA: Members of the 1992 ASB Summer Study, "C2 on the Move" will meet to continue work on the study. The purpose of this Classified meeting is directed to interviews with commanders who participated in Desert Storm and Just Cause. An in-brief with the Commander-in-Chief, Special Operations and Deputy Commander, Forces Command will include discussions on Desert Storm lessons learned, recommendations concerning C2OTM, contingency planning, and recommendations concerning C2OTM requirements. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5 U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be

contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-9441 Filed 4-21-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Advisors to the President; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Advisors to the President, Naval War College, will meet on 6 and 7 May 1992, in room 210, Conolly Hall, Naval War College, Newport, Rhode Island. The meeting will commence 8:30 am on 6 May and terminate at approximately 12 pm on 7 May. The purpose of the meeting is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College, and is open to the public.

For further information contact: Mrs. Mary E. Guimond, Assistant to the Dean of Academies, Naval War College, Newport, Rhode Island 02841-5010. Telephone number (401) 841-3589.

Dated: April 7, 1992.

Wayne T. Baucino,

*Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.*

[FR Doc. 92-9285 Filed 4-21-92; 8:45 am]

BILLING CODE 3810-AE-F

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend and delete record systems.

SUMMARY: The Department of the Navy proposes to delete one and amend seven existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion will be effective April 22, 1992. The amendments will be effective on May 22, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the Federal Register as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19384, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Updated Navy Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53187, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2898, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: April 17, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

N01800-1

SYSTEM NAME:

Naval Base Resident Information System (51 FR 18124, May 16, 1986).

Reason: Naval Home was disestablished as a naval activity on November 5, 1991, as a result of Pub. L. 101-510. Therefore, it is no longer needed.

Amendments

N01070-13

SYSTEM NAME:

Nuclear Program Interview and Screening (51 FR 18093, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Naval Sea Systems Command (Code 08), Washington, DC 20362-5100."

* * * * *

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Add "and Executive Order 9397." to end of entry.

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name, Navy rate (if applicable), Social Security Number, approximate date of screening or attendance at Nuclear Power School."

SAFEGUARDS:

Delete entry and replace with "All files in this system are stored in safes which are located in a restricted area with controlled access."

RETENTION AND DISPOSAL:

Delete entry and replace with "Permanent."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362-5101."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362-5101."

The requester should provide full name, Navy rate (if applicable), Social Security Number, dates of attendance at Nuclear Power School Class (if applicable), or dates of service or screening."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362-5101.

The requester should provide full name, Navy rate (if applicable), Social Security Number, dates of attendance at Nuclear Power School Class (if applicable), or dates of service or screening."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual; Bureau of Naval Personnel; U.S. Naval Academy; Naval Recruiting Command; current and/or previous commands; and Director, Naval Nuclear Propulsion."

* * * * *

N01070-13

SYSTEM NAME:

Nuclear Program Interview and Screening.

SYSTEM LOCATION:

Naval Sea Systems Command (Code 08), Washington, DC 20362-5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel interviewed or considered for assignment or retention in the Naval Nuclear Power Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview appropriation folder, interview chronology, interview index card, Navy Enlisted Nuclear Program Technical Screening Sheets, Nuclear Propulsion Officer Candidate Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To determine eligibility of individuals for the Naval Nuclear Power Program; to maintain statistical and accounting records on individuals for assignment and retention in the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, loose leaf binders, and index card box.

RETRIEVABILITY:

Name, Navy rate (if applicable), Social Security Number, approximate date of screening or attendance at Nuclear Power School.

SAFEGUARDS:

All files in this system are stored in safes which are located in a restricted area with controlled access.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362-5101.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362-5101.

The requester should provide full name, Navy rate (if applicable), Social Security Number, dates of attendance at Nuclear Power School Class (if applicable), or dates of service or screening.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362-5101.

The requester should provide full name, Navy rate (if applicable), Social Security Number, dates of attendance at Nuclear Power School Class (if applicable), or dates of service or screening.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Bureau of Naval Personnel; U.S. Naval Academy; Naval Recruiting Command; current and/or previous commands; and Director, Naval Nuclear Propulsion.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01500-8

SYSTEM NAME:

Personnel and Training Evaluation Program Automated System (51 FR 18113, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete "Automated System".

SYSTEM LOCATION:

Delete entry and replace with "Strategic Systems Programs, Navy Department, Washington, DC 20376-5002."

* * * * *

PURPOSE(S):

Delete entry and replace with "To maintain a data base which will permit the Strategic Systems Programs to record achievement test scores of enlisted members who operate and maintain the Strategic Weapon System on Fleet Ballistic Missile Submarines. This information will be used to assess the adequacy of training received and the need for additional training. Internal Navy users are the Director, Strategic Systems Programs, Chief of Naval Technical Training and assigned schools, Type Commanders and assigned units in the performance of their duties relating to training on the Strategic Weapon System. Chief of Naval Personnel and Type Commanders and assigned units in the performance of their duties related to personnel assignment. Navy Personnel Research and Development Center who may, from time to time, validate service selection criteria for the DOD. It may be provided to such civilian contractors and their employees as are or may be operating the system in accordance with an

approved official contract with the U.S. Navy."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Strategic Systems Programs, Navy Department, Washington, DC 20376-5002.

Requester should provide his/her full name, Social Security Number, and military duty status. Visitors should present military identification card, driver's license or other similar identification."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Strategic Systems Programs, Navy Department, Washington, DC 20376-5002.

Requester should provide his/her full name, Social Security Number and military duty status. Visitors should present military identification card, driver's license or other similar identification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals, their supervisors, Bureau of Naval Personnel, schools assigned to the Chief of Naval Technical Training."

* * * * *

NO1500-8

SYSTEM NAME:

Personnel and Training Evaluation Program.

SYSTEM LOCATION:

Strategic Systems Programs, Navy Department, Washington, DC 20376-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted technicians who have been trained to operate and maintain the Strategic Weapon System on Fleet

Ballistic Missile Submarines. These individuals are identified by a Navy Enlisted Classification (NEC) Code in the series 3301-3349.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, NEC codes, current duty station and projected rotation date, duty station assignment history, Armed Services Vocational Aptitude Battery or Basic Test Battery scores, completion date for Navy schools, civilian education, promotion history (present and past rate), enlistment data (dates of service entry and expiration of enlistment/extension), patrol experience and scores on the Personnel and Training Evaluation Program examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To maintain a data base which will permit the Strategic Systems Programs to record achievement test scores of enlisted members who operate and maintain the Strategic Weapon System on Fleet Ballistic Missile Submarines. This information will be used to assess the adequacy of training received and the need for additional training. Internal Navy users are the Director, Strategic Systems Programs, Chief of Naval Technical Training and assigned schools, Type Commanders and assigned units in the performance of their duties relating to training on the Strategic Weapon System. Chief of Naval Personnel and Type Commanders and assigned units in the performance of their duties related to personnel assignment. Navy Personnel Research and Development Center who may, from time to time, validate service selection criteria for the DOD. It may be provided to such civilian contractors and their employees as are or may be operating the system in accordance with an approved official contract with the U.S. Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on computer media, disks, or magnetic tape. Hard copy reports are distributed to authorized user activities. These reports are stored in notebooks or file folders in drawers, cabinets, or other filing equipment.

RETRIEVABILITY:

Social Security Number, name, and duty station.

SAFEGUARDS:

Access is provided to authorized personnel only on a need to know basis. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and password. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment, and monitoring is the responsibility of the systems manager.

RETENTION AND DISPOSAL:

Records are retained for five years after an individual leaves the Fleet Ballistic Missile program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Training Systems Branch, Strategic Systems Program, Navy Department, Washington, DC 20376-5002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Strategic Systems Programs, Navy Department, Washington, DC 20376-5002.

Requester should provide his/her full name, Social Security Number, and military duty status. Visitors should present military identification card, driver's license or other similar identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Strategic Systems Programs, Navy Department, Washington, DC 20376-5002.

Requester should provide his/her full name, Social Security Number and military duty status. Visitors should

present military identification card, driver's license or other similar identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, their supervisors, Bureau of Naval Personnel, schools assigned to the Chief of Naval Technical Training.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N03501-1

SYSTEM NAME:

Fleet Ballistic Missile Submarine Demo Shakedown Operation Crew Evaluation (51 FR 18129, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "FBM Submarine DASO Crew Evaluation".

SYSTEM LOCATION:

Delete entry and replace with "Strategic Systems Programs, Navy Department, Washington, DC 20376-5002."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Record of personnel performance during DASO."

* * * * *

PURPOSE(S):

In line three, replace "Programs" for "Projects"; in line four replace "Ten" for "Six."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name and ship."

SAFEGUARDS:

In line four, replace "Programs" for "Project Office"; in line five, replace "Ten" for "Six".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002."

Request should contain full name, military status, time period and ship undergoing DASO, and billet held."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Director, Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002."

Request should contain full name, military status, time period and ship undergoing DASO, and billet held."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N03501-1

SYSTEM NAME:

FBM Submarine DASO Crew Evaluation.

SYSTEM LOCATION:

Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer and enlisted personnel in responsible positions within the Weapons and Navigation Department of both crews of a Fleet Ballistic Missile (FBM) Submarine undergoing Demonstration and Shakedown Operations (DASO).

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of personnel performance during DASO.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

Preparation of Certification for Deployment Messages by the Director,

Strategic Systems Programs and Commander, Submarine Group Ten, and development of follow-on training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name and ship.

SAFEGUARDS:

Access restricted to Assistant for Weapons System Operation and Evaluation staff, Strategic Systems Programs and Commander, Submarine Group Ten staff. Records are stored in a vault.

RETENTION AND DISPOSAL:

Maintained for at least two years then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002.

Request should contain full name, military status, time period and ship undergoing DASO, and billet held.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Deputy Director, Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002.

Request should contain full name, military status, time period and ship undergoing DASO, and billet held.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part

701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Observation of DASO Team and questionnaire filled out by ship's personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04410-2

SYSTEM NAME:

Military and Civilian Employee Dependents Hurricane Shelter Assignment List (51 FR 18138, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Military/Civilian Dependents Hurricane Shelter List".

SYSTEM LOCATION:

Delete entry and replace with "Naval Computer and Telecommunications Station, Key West, FL 33040-5000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Military personnel and civilian employees and their dependents who apply for assignment to the station's hurricane shelter."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Names and rates of military/civilian station personnel applying for hurricane shelter assignments for their families and the number of their dependents."

PURPOSE(S):

Delete entry and replace with "To provide the Disaster Preparedness Officer with information to determine shelter logistics requirements and to provide the shelter officer with information to muster assigned dependents in case of a hurricane."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Maintained from May through December of each year and then destroyed."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Disaster Preparedness Officer, Naval Computer and Telecommunications Station, Key West, FL 33040-5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine

whether this system of records contains information about themselves should address written inquiries to the Disaster Preparedness Officer, Naval Computer and Telecommunications Station, Key West, FL 33040-5000."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Disaster Preparedness Officer, Naval Computer and Telecommunications Station, Key West, FL 33040-5000."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N04410-2

SYSTEM NAME:

Military/Civilian Dependents Hurricane Shelter List.

SYSTEM LOCATION:

Naval Computer and Telecommunications Station, Key West, FL 33040-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel and civilian employees and their dependents who apply for assignment to the station's hurricane shelter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and rates of military/civilian station personnel applying for hurricane shelter assignments for their families and the number of their dependents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To provide the Disaster Preparedness Officer with information to determine shelter logistics requirements and to provide the shelter officer with information to muster assigned dependents in case of a hurricane.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the

Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Name.

SAFEGUARDS:

File maintained in locked cabinet by Disaster Preparedness Officer.

RETENTION AND DISPOSAL:

Maintained from May through December of each year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Disaster Preparedness Officer, Naval Computer and Telecommunications Station, Key West, FL 33040-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Disaster Preparedness Officer, Naval Computer and Telecommunications Station, Key West, FL 33040-5000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Disaster Preparedness Officer, Naval Computer and Telecommunications Station, Key West, FL 33040-5000.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military/civilian command sponsors requesting hurricane shelter for their families.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05330-1

SYSTEM NAME:

Manhour Accounting System (51 FR 18149, May 16, 1986).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "Active." from entry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Record contains such information as Name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, Navy Enlisted Code/Military Occupational Specialty (NEC/MOS), and hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To effectively manage the work force."

* * * * *

STORAGE:

Delete entry and replace with "Magnetic tape and paper."

RETRIEVABILITY:

Delete "SSNA" and replace with "Social Security Number."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed."

The request should include full name, Social Security Number, address of individual concerned, and should be signed."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed."

The request should include full name, Social Security Number, address of individual concerned, and should be signed."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy

Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual, correspondence, and personnel records."

* * * * *

N05330-1

SYSTEM NAME:

Manhour Accounting System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To effectively manage the work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Magnetic tape and paper.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Files are stored in a limited access area. Information provided via batch processing is of a predetermined and strictly formatted nature.

RETENTION AND DISPOSAL:

Individual personal data are retained only for that period of time that an individual is assigned. Upon departure of an individual, personal data are deleted from the records and history records are not maintained.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05340-1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society (51 FR 18149, May 16, 1986).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists."

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PURPOSE(S):

Delete entry and replace with "To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide respective campaign coordinators with necessary information."

* * * * *

STORAGE:

Replace "punched cards," with "and".

* * * * *

SAFEGUARDS:

Delete entry and replace with "Access is limited and provided on a need to know basis only. Records are locked in safes and/or guarded offices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

The request should include full name, Social Security Number, address of the individual concerned, and should be signed."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

The request should include full name, Social Security Number, address of the individual concerned, and should be signed."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting

contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N05340-1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 9397 and 10927.

PURPOSE(S):

To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide the respective campaign coordinator with necessary information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

File folders, card files, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is limited and provided on a need to know basis only. Records are locked in safes and/or guarded offices.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Payroll files, administrative personnel files, contributors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512-1

SYSTEM NAME:

Vehicle Control System (51 FR 18155, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have registered their vehicles, boats, or trailers at a Navy

installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number, Driver's license information (i.e., height, weight, hair and eye color), place of employment, driving record, Military ID information, etc."

File also contains records/notations of traffic violations, citations, suspensions, applications for government vehicle operator's ID card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training."

File also contains records/notations of traffic violations, citations, suspensions, applications for government vehicle operator's ID card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "and Executive Order 9397." to the end of the entry.

PURPOSE(S):

Delete entry and replace with "To provide a record of each individual who has registered a vehicle in an installation to include a record on individuals authorized to operate official government vehicles."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in file folders, card files, and on magnetic tape."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Limited access provided on a need to know basis only. Information maintained on computers is password protected. Files maintained in locked and/or guarded office."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes erased."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

Written requests should contain full name and Social Security Number, and request must be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

Written requests should contain full name and Social Security Number, and requests must be signed."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual concerned, driving record, insurance papers, activity correspondence, investigators reports, and witness statements."

* * * * *

N05512-1

SYSTEM NAME:

Vehicle Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have registered their vehicles, boats, or trailers at a Navy installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles."

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number, Driver's license information (i.e., height, weight, hair and eye color), place of employment, driving record, Military ID information, etc."

File also contains records/notations of traffic violations, citations, suspensions, applications for government vehicle operator's ID card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To provide a record of each individual who has registered a vehicle in an installation to include a record on individuals authorized to operate official government vehicles."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, and on magnetic tape."

RETRIEVABILITY:

Name, Social Security Number, case number, and organization."

SAFEGUARDS:

Limited access provided on a need to know basis only. Information maintained on computers is password protected. Files maintained in locked and/or guarded office."

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records

are then destroyed and records on magnetic tapes erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and requests must be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, driving record, insurance papers, activity correspondence, investigators reports, and witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-9377 Filed 4-21-92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board

National Assessment of Educational Progress

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice.

SUMMARY: The National Assessment Governing Board (the Board) is announcing recommendations for non-mandated subjects to be assessed by the National Assessment of Educational Progress. The Board seeks comment from the public on these preliminary recommendations and on whether the Board should consider selecting additional subjects to assess.

DATES: Comments must be received by May 29, 1992.

ADDRESSES: Comments should be sent to Assistant Director, Policy and Research, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC 20005-4013.

FOR FURTHER INFORMATION CONTACT: Ray Fields, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC 20005-4013, Telephone: 202-357-6938.

SUPPLEMENTARY INFORMATION: The Board and the National Assessment of Educational Progress (NAEP) are authorized under the General Education Provisions Act (the Act). The purpose of NAEP is to assess the academic performance of students in grades 4, 8 and 12 in various subjects. First conducted in 1969, NAEP is the nation's only regular, continuing nationally representative measure of student performance. Beginning in 1990 on a trial basis, NAEP also collects and reports state-representative data on student performance. The Board formulates the policy guidelines for NAEP. Section 406(i)(6)(A)(ii) of the Act authorizes the Board to select the subject areas to be assessed by NAEP. Section 406(i)(2) of the Act mandates assessments of reading and mathematics at least once every two years, of writing and science at least once every four years, and of history and geography at least once every six years; in addition, this section provides that other non-mandated subjects may be assessed as selected by the Board.

Beginning in June, 1990 and continuing through March, 1992, the Board invited and received suggestions on non-mandated subjects to consider. This includes responses to the Board's June 6, 1990 notice in the *Federal Register*, and recommendations from the National Education Goals Panel, state assessment directors through the Council of Chief State School Officers, the National Endowment for the Arts, and the National Council on Economic Education.

On March 6, 1992, the Board adopted a resolution that the subjects of the arts, civics, world history, foreign language and economics, as well as the competencies identified by the

Department of Labor Secretary's Commission on Achieving Necessary Skills (SCANS), shall, subject to the availability of funds, be assessed through the year 2000 by the NAEP. As a part of the same resolution, the Board created the *ad hoc* Committee on the Future of NAEP. One of the responsibilities of this committee is to develop recommendations to the Board for a schedule of non-mandated subjects to be tested by NAEP over a ten-year period beginning in 1996.

The committee intends to use comments received in response to this notice in its deliberations. The committee recognizes the importance of this initiative to select non-mandated subjects for assessment by NAEP, especially in light of the January 24, 1992 resolution of the National Education Goals Panel that NAEP should be used as the primary source of data for measuring, through the decade, the nation's and individual states' progress in student achievement in grades 4, 8 and 12. Further, the committee anticipates that comments will assist in making determinations to achieve a balance between what is desirable to assess from the perspective of subject matter necessary for a literate society, an informed body politic, and a robust economy and what is feasible to assess within constraints of resources and technical capability.

The committee is particularly interested in receiving comments that will help it address the following questions:

1. In what order of priority should assessments be conducted in the subjects of the arts, civics, world history, foreign language and economics, and the competencies identified by SCANS?
2. What other subjects, if any, should be considered? What is the rationale for including such subjects?
3. What criteria should be considered in determining whether to recommend a non-mandated subject for assessment, for determining the order in which non-mandated subjects will be assessed, and in determining the frequency by which a specific non-mandated subject should be assessed?
4. For each subject, are assessments in the three grades NAEP is required to study (grades 4, 8 and 12) appropriate or would a subject be best suited to only one or two of those grades?
5. For each subject, in addition to reporting at the national level, would state-level reporting be appropriate?
6. With respect to assessing foreign language, which languages should be

assessed and which grades would be appropriate?

7. With respect to SCANS competencies, should there be a separate assessment or should the competencies be embedded in test items in subject area assessments?

Comments need not be limited to these questions nor need they necessarily address these questions.

Dated: April 16, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-9284 Filed 4-21-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact; Fermilab Main Injector, Fermi National Accelerator Laboratory

AGENCY: Department of Energy.

ACTION: Proposed Finding of No Significant Impact (FONSI).

SUMMARY: The Department of Energy (DOE) has prepared an Environmental Assessment (EA), DOE/EA-0543, for the proposed construction and operation of the Fermilab Main Injector (FMI) accelerator at the Fermi National Accelerator Laboratory (Fermilab) in Batavia, Illinois. The accelerator would be housed in a ring enclosure having a circumference of about two miles. The FMI complex would include the necessary beamlines to connect to existing facilities, service buildings, an assembly building, and a new 345 kV substation with connecting electric power lines. The proposed action would include cooling ponds, access roads, service utilities, and landscaping. The FMI construction would affect 135 acres of the 6,800-acre Fermilab site. Completion of the proposed action would make it possible to realize the full scientific potential of Fermilab's high energy physics well into the 21st century.

Based on the analysis in the EA, DOE believes that the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, that would require the preparation of an Environmental Impact Statement (EIS). Therefore, the DOE proposes to issue a Finding of No Significant Impact (FONSI). The proposed FONSI and the EA are being made available for public comment for a period of 30 days following the date of this notice. Comments postmarked within the 30-

day public comment period will be considered by DOE prior to a final determination whether to issue a FONSI or to prepare an environmental impact statement for the proposed FMI project.

Description of the Proposed Action

The proposed action consists of the construction and operation at Fermilab of a 150 GeV Main Injector accelerator and associated facilities, including beamlines to connect to the existing Tevatron, Antiproton Source, and Fixed Target experimental areas. It would replace the 20-year-old Main Ring accelerator that is housed in the 4-mile circumference Tevatron ring enclosure. Many of the components of the Main Ring accelerator would be reutilized in the FMI.

Luminosity is a term used to measure the rate of interactions of counter-rotating beams of particles at their collision areas. The primary goal of the proposed project is to increase the luminosity of antiproton-proton interactions at the two existing Fermilab collider detector facilities by as much as five-fold. It will also increase the intensity of protons for fixed target Tevatron operations by about three-fold. Specifically provided for in the scope of the proposed project are:

- Construction of the ring enclosure, service buildings, utilities, and fabrication of new technical components, including dipole magnets and power supplies.
- Construction of beamline enclosures, service buildings, utilities, and technical components required to implement an 8 GeV Booster-to-FBI beam line, 150 GeV proton and antiproton FBI-to-Tevatron beam transfer lines, and a 120 GeV FBI-to-Anti Proton Production Target beamline.
- Fabrication of technical components required to implement the delivery of 120 GeV beam from the FMI to the Fixed Target research areas.
- Modifications to the F-Zero section of the Tevatron which are required for installation of the 150 GeV proton and antiproton transfer lines.
- Construction of an assembly building to house the fabrication, assembly and quality assurance of technical components.
- Construction of a new 345 Kv substation and approximately 2½ miles of power lines for delivery of electric power to the FMI site.

Alternatives

Two alternatives to the proposed action are considered in the EA: (1) No action, and (2) construction at other sites within Fermilab. Taking no action would mean not constructing the FMI

accelerator, and continuing operations at Fermilab under current management practices. The no action alternative would result in no alteration of wetlands or the floodplain of Indian Creek. Because of technical constraints associated with the design of beamlines, the FMI must be sited at one of six straight sections of the Tevatron. Siting the FMI along straight sections of the Tevatron would involve the disturbance of approximately 27 acres of wetlands, a site listed in National Register of Historic Places, and almost all of the reconstructed native prairie. The second alternative would be technologically and environmentally unacceptable.

Environmental Impacts

The EA analyzes the impacts of the construction and operation of the FMI. DOE had developed a draft Mitigation Action Plan (MAP) for implementation of mitigative measures designed to minimize the significance of potential environmental impact. The draft MAP which is included as Appendix C of the EA, will be revised, as appropriate, based on public comments. The following is a summary of the environmental consequences of the proposed action.

Impacts to Floodplain/Wetlands

The construction of the FMI would require permanently filling about six acres of existing wetlands. The FMI has been designed to minimize the impact on wetlands. The plan is to construct about eight and one-half acres of new wetlands to offset the filled wetlands. On August 13, 1991, the U.S. Army Corps of Engineers (COE) issued DOE a permit pursuant to section 404 of the Clean Water Act to fill the wetlands. On June 4, 1991, the Illinois Environmental Protection Agency issued a water quality certification pursuant to section 401 of the Clean Water Act. The third agency involved in the joint permit application, the Illinois Department of Transportation/Division of Water Resources (IDOT/DWR), has reviewed the proposed alteration of Indian Creek and its floodplain, and has given preliminary approval. The IDOT/DWR must approve the final construction drawings before ground breaking can commence. A Floodplain/Wetlands Assessment, incorporated in the EA, analyzes the proposed action's effect on the wetlands, and the compensatory measures that would be taken. The Floodplain/Wetlands Assessment analyzes the disturbance to Indian Creek's existing 100-year floodplain and the mitigation measures that would be taken to compensate for the disturbance.

No negative impacts due to flooding are expected from construction of the FMI. In accordance with the DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), a Notice of Floodplain and Wetlands Involvement was published in the *Federal Register* on June 11, 1991 (56 FR 26806); no comments were received.

Impacts to Ecology

Experts in birds, insects, amphibians, reptiles and mammals have conducted field surveys in the FMIO construction area. Suitable habitat and the presence or absence of the listed species have been recorded, and the consultants' reports are referenced in the EA. No threatened or endangered species would be affected by FMI construction or operation. As is discussed in the EA, particular attention has been paid to a great blue heron rookery, inside the proposed FMI, which was used until the summer of 1990. In 1991, the herons did not return to this area but used another nesting area on the Fermilab site. An ornithologist has formulated recommendations concerning protection of the rookery inside the proposed FMI and other migratory fowl in the area. The recommendations (including a plan for construction date restrictions) will be followed by DOE as part of the proposed action if the herons return to the rookery inside the FMI.

Radiation Impacts

Operation of the proposed FMI would result in insignificant amounts of radioactive emissions to the air and releases to soils. Fermilab's radionuclide emissions to the atmosphere after the FMI becomes operational would result in a dose to a hypothetical individual at the site boundary of 0.33 mrem/yr under typical operating conditions. The maximum dose at the site boundary from the current Tevatron operation with the Main Ring accelerator is estimated to be 0.029 mrem/yr. Even with conditions maximized, the cumulative emissions for Fermilab with the FMI would result in a dose to a hypothetical individual at the site boundary of 1.0 mrem/yr. Thus, Fermilab's radionuclide emissions as a result of FMI operations would result in a dose to a member of the public of less than one-tenth of the U.S. EPA's standard of 10 mrem/yr for airborne radionuclide emissions from DOE facilities.

The proposed FMI has been designed to ensure ample protection to Fermilab employees and to the public from penetrating radiation. Appropriate shielding would be used to prevent any

significant increase over historical levels. It is anticipated that FMI operations would not result in a detectable levels of accelerator-produced radionuclides in surface waters, sediments, or groundwater. No significant offsite or on-site impact from an accident is expected at FMI.

Cumulative Impacts

No significant cumulative or long-term environmental effects are expected to result from the proposed action. The power consumption of Fermilab would be increased by 25% over that consumed in fiscal year 1990 but could be met by existing capacity.

Proposed Determination

Based on the analyses in the EA, the DOE believes that the proposed construction and operation of the FMI at the Fermilab does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, the DOE proposes to issue a Finding of No Significant Impact (FONSI).

Public Availability

The EA and the proposed FONSI are being made available for public review for a period of 30 days following the date of this Notice. Following completion of the public review period, the DOE will consider comments received prior to making a determination on whether to issue a FONSI or to prepare an environmental impact statement for the proposed FMI project. Comments should be addressed to Mr. Mravca at the following address and postmarked no later than 30 days after publication of this Notice to ensure consideration. Comments postmarked after the date will be considered to the extent practicable.

Copies of this EA (DOE/EA-0543) are available from: Andrew E. Mravca, Manager, Batavia Area Office, U.S. Department of Energy, P.O. Box 500, Batavia, Illinois 60510, (708) 840-3281.

For further information regarding the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

Issued in Washington, DC, this 14th day of April, 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92-9399 Filed 4-21-92; 8:45 am]

BILLING CODE 6450-01-M

Wetland Involvement Notification for Site Characterization Activities at the Department of Energy's Pinellas Plant at Largo, FL

AGENCY: Department of Energy (DOE).

ACTION: Notice of wetland involvement.

SUMMARY: Regulations at 10 CFR part 1022 require DOE to evaluate actions it may take in a wetland in order to ensure proper consideration of protection of the wetland in decision making. As soon as practicable after a determination that a wetland may be involved, the regulations require that public notice be published in the *Federal Register*, including a description of the proposed action and its location. DOE proposes to carry out site characterization activities, some of which would be within designated wetland areas, at its Pinellas Plant located in Largo, Florida. These activities would be designed to avoid or minimize impacts to wetlands and would be performed as part of the Pinellas Plant Resource Conservation and Recovery Act (RCRA) Facility Investigation required by section 3004(u) of RCRA, as amended by the hazardous and Solid Waste Amendments (HSWA). These requirements are described in the HSWA Permit issued to the Pinellas Plant (Permit No. FL6 890 090 008, dated February 9, 1990) by the U.S. Environmental Protection Agency, Region IV.

DATES: Comments on the proposed action must be postmarked by May 7, 1992.

ADDRESSES: All comments concerning this notice should be addressed to: Wetlands Comments, c/o D.L. Ingle, Program Manager, Environmental Restoration Program, Pinellas Area Office, United States Department of Energy, Post Office Box 2900, Largo, Florida, 34649, Fax: (813) 541-8370.

FOR FURTHER INFORMATION CONTACT: Information on floodplain/wetland environmental review requirements is available from: Carol M. Borgstrom, Director, office of NEPA Oversight, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The proposed activities would involve two manmade storm water retention ponds known as the East Pond and the West Pond, which have been designated as wetlands by the U.S. Fish and Wildlife Service. The East Pond has a surface area of 1.78 acres and a volume of approximately 2.5 million gallons; the

West Pond has a surface area of 1.63 acres and a volume of approximately 2.6 million gallons. The proposed activities would include multiple surface water and sediment samplings to verify the presence of volatile organic compounds and metals contamination within the ponds. All sampling activities would be nonintrusive in nature and would be performed in an artificial wetland presently in existence. The purpose of these investigations is to determine not only the extent of contamination but also to evaluate potential threats to the human environment. Additional information and maps depicting the potentially affected wetland areas are available from DOE at the first address shown above. In accordance with DOE regulations regarding compliance with wetland environmental review requirements (10 CFR 1022), a wetlands assessment will be prepared for all future interim and final remedial actions which impact wetlands at the Pinellas Plant and will be incorporated in the appropriate National Environmental Policy Act documentation.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-0400 Filed 4-21-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award to Colorado School of Mines; (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of a noncompetitive financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i), (B) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a forty-eight month grant to the Colorado School of Mines, Golden, CO in the amount of \$30,000 per year.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone (304) 291-4386, Procurement Request No. 21-92MC29248.000.

SUPPLEMENTARY INFORMATION: The Colorado School of Mines has formed a consortium for gathering and distributing information relative to the potential use of inhibitors in hydrate stability zones. The consortium will evaluate future opportunities in production engineering and the potential for hydrate formation within the wellbore and define which or what

combination of inhibitors may best be used to resolve the situation. The goals of the consortium are consistent with the DOE's mission of coordination, integration, and synthesis of research efforts necessary to establish an estimate of reserves for future use.

Issued: April 19, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-0401 Filed 4-21-92; 8:45 am]

BILLING CODE 6450-01-M

Math/Science Leadership Development and Recognition Program; Availability of Financial Assistance Solicitation

April 10, 1992.

AGENCY: Department of Energy (DOE), San Francisco Field Office.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: In accordance with 10 CFR 600.9, the Department of Energy (DOE), the Office of Minority Economic Impact in conjunction with the DOE San Francisco Field Office announces the availability of a financial assistance solicitation for use in submitting an application for a grant under the Math/Science Leadership Development and Recognition Program. Recent studies have made it quite clear that the United States is not producing enough scientists, engineers and professionals in related fields to meet projected future demands. African Americans, Hispanics, American Indians, Native Alaskans and certain other minorities continue to be under-represented in math and science professions and at all educational levels. In view of its critical dependence on advanced technology, the DOE is implementing this program in an effort to find a selected number of projects that could serve as models of successful efforts by public and private organizations leading to increased minority participation in mathematics, science and engineering fields. A Solicitation for Financial Assistance Application (SFAA) Number DE-FG03-92FS19327, has been developed for the purpose of providing qualified organizations interested in submitting an application with general guidelines and instructions. A copy of the SFAA may be obtained by contacting the office indicated below.

ELIGIBILITY: The intent of the financial assistance for this activity is to assist in expanding the support provided by private industry foundations and individuals to those organizations dedicated to stimulating or sustaining the interest of minorities in

mathematics, science and engineering. DOE has determined that one of the most effective ways to stimulate or sustain minority interest in mathematics, science and engineering is to support existing programs that have been successful and can expand. Therefore, in accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is restricted to all educational institutions, section 501(c)(3) tax exempt organization, and not-for-profit entities (including professional and technical associations) with a program designed to increase minority participation in mathematics, sciences and engineering—excluding social sciences. To be eligible, programs sponsored by educational institutions must be apart from the normal academic requirements associated with progress toward completion of a diploma or degree program.

FOR COPY OF THE SFAA: To receive a copy of the SFAA, please send your request to the address indicated below.

DATES: Applications are due at the address listed below no later than 2 p.m., Pacific Standard Time, on May 21, 1992. The SFAA does not commit the Government to pay costs incurred for the preparation or submission of the application proposal, or in making necessary studies or design for the preparation thereof.

FOR FURTHER INFORMATION CONTACT: Copies of the SFAA may be obtained by contacting the U.S. Department of Energy, San Francisco Field Office, ATTN: Gerald R. Acocck, Contract Specialist, Contracts Assistance Management Division, 1333 Broadway, Oakland, California 94612, Phone (510) 273-4368 (no collect calls please). Completed applications referencing SFAA No. DE-FG03-92SF19327 must be forwarded to this same address.

SUPPLEMENTARY INFORMATION: The primary objective of the Math/Science Leadership Development and Recognition Program is to identify and promote efforts to increase the number of under-represented minority students pursuing studies in mathematics, science or engineering; efforts to improve the performance of students in those fields; and to provide resources needed to implement those efforts. In particular, DOE intends to recognize activities which have demonstrated "what works" in the education of minorities in the sciences and mathematics. The DOE will provide financial assistance to allow the selected programs to expand the coverage of activities, increase the number of participants, improve the effectiveness of services, expand parent and/or community involvement, or

implement other improvements as defined by the applicant. In addition, the DOE intends to provide recognition to those qualified programs which do not get selected for financial assistance. It is expected that this SFAA will result in the award of approximately 12 grants totaling more than \$500,000. The maximum award amount shall be limited to \$50,000 per grant. In the event there is not a sufficient number of acceptable applications submitted in response to this SFAA, the DOE reserves the right to extend competition under this SFAA by holding a second round of application review and award.

Joan Macrusky,

Acting Director, Contracts Management Division.

[FR Doc. 92-0416 Filed 4-21-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 92-14; Human Genome Program; Ethical, Legal, and Social Issues

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, hereby announces its interest in receiving applications for Special Research Grants in support of the Ethical, Legal, and Social Issues (ELSI) activities of the Human Genome Program (HGP). This Program is a coordinated multidisciplinary research effort aimed at developing creative, innovative resources and technologies which will lead to a detailed understanding of the human genome at the molecular level. This particular research notice encompasses research and conference grants that address ethical, legal, and social issues that may arise from applications of knowledge and materials resulting from the HGP. The DOE especially encourages the submission of applications to conduct multidisciplinary empirical research in the area of privacy at it pertains to genetic information. This may include (but it is not limited to) issues of ownership and control of genetic information, consent to disclosure and use of genetic information, the impact on scientific collaboration and candor, and the role(s) of high performance computers in information management relevant to genetic data. Applications

should demonstrate awareness of the relevant literature, and should include detailed plans for the development and analysis of factual information and the conduct of normative inquiry bearing on the ethical, legal, and social issues presented by applications of the knowledge gained from the HGP. All applications should include, where appropriate, detailed discussion of human subjects protection issues; e.g., storage of, manipulation of, and access to data. Where survey techniques are proposed, inclusion of women, minorities, and potentially disabled individuals must be noted and described, unless specific exclusions are scientifically necessary and justified in detail.

The DOE is also soliciting for the preparation and dissemination of educational materials in any appropriate medium that will enhance public understanding of both the scientific aspects and the ethical, legal, and social aspects of the HGP. In addition, DOE is encouraging conferences focusing on specific issues or areas of concern related to the ethical, legal, and social implications of the HGP. Educational and conference applications should also demonstrate awareness of the relevant literature, and include detailed plans for the accomplishment of project goals. In the case of educational activities, the DOE strongly recommends inclusion of assessments of effectiveness of the proposed activities. In the case of conferences, a fairly detailed and complete roster of committed speakers is necessary. At the completion of the conference, a summary or report is required.

Before preparing a formal application, potential applicants are strongly encouraged to submit a preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives, methods of accomplishment, measures of accomplishment including anticipated products, and an estimated budget. These will be reviewed relative to the scope and the research needs of the DOE's Human Genome Program ELSI activities. Preapplications referencing Program Notice 92-14 should be received by May 15, 1992, and sent to Dr. Daniel W. Drell, Office of Health and Environmental Research, ER-72 (GTN), U.S. Department of Energy, Washington, DC 20585. Telephone and FAX numbers are required parts of the preapplication. A response to the preapplication discussing the potential program relevance of a formal application will be communicated by June 12, 1992.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., e.d.t., August 7, 1992, to be accepted for merit review in October 1992 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program Notice 92-14 should be forwarded to: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, room G-236, Washington, DC 20585, ATTN: Program Notice 92-14. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Health and Environmental Research, ER-72 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903-6488.

SUPPLEMENTARY INFORMATION: The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE Human Genome Program. OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research data and information, educational and training materials, and conference and meeting results. Funds to defray the costs of disseminating materials and results are allowable; however, such requests must be adequately justified. It is anticipated that approximately \$1.1 million will be available for grant awards during FY 1993, contingent upon availability of appropriated funds. Multiple year funding of grant awards is also contingent upon availability of funds. Previous awards have ranged from \$5 thousand per year to \$400 thousand per year (total costs) with terms from 1 to 3 years. Similar award sizes are anticipated for new grants. Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the ER Application and Guide for the Special Research Grant Program and 10 CFR Part 605. The Application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, Washington, DC 20585. Telephone requests may be

made by calling (301) 903-6488. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC, on April 15, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-9403 Filed 4-21-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-05718T Colorado-44]

State of Colorado; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 16, 1992.

Take notice that on April 13, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the "J" Sand Formation underlying certain lands in Adams County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application is described as follows:

Township 2 South, Range 63 West, 6th P.M.

Sections 9 and 10: All
Sections 15 through 17: All
Sections 20 through 22: All
Sections 28 and 29: All

The notice of determination also contains Colorado's findings that the referenced portion of the "J" Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92-9375 Filed 4-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-05860T Kentucky-5]

State of Kentucky; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 16, 1992.

Take notice that on April 14, 1992, the Kentucky Public Service Commission submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Corniferous—Big Six Sand Formation underlying portions of Morgan and Magoffin Counties qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes the Lenox, White Oak, Dingus and Salyersville North Quandrangles, and portions of the Redbush and Oil Springs Quandrangles.

The notice of determination also contains Kentucky's findings that the referenced portion of the Corniferous—Big Six Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-9375 Filed 4-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-05694T Oklahoma-14]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

April 16, 1992.

Take notice that on April 13, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Osborne Formation underlying certain portions of Grady County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area consists of sections 32 through 35, Township 9 North, Range 6 West, and sections 2 through 5, 8 through 11, and 14 through 17, Township 8 North, Range 6 West.

The notice of determination also contains Oklahoma's findings that the referenced portions of the Osborne

Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-9376 Filed 4-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-5-22-001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 16, 1992.

Take notice that CNG Transmission Corporation (CNG), on April 13, 1992, pursuant to section 4 of the Natural Gas Act, as amended, the Commission's Rules and Regulations issued thereunder, and the Commission's March 27, 1992 order in this proceeding, submits six copies of the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

First Revised 2nd Revised Sheet No. 50
Substitute Third Revised Sheet No. 50

The proposed effective date for First Revised 2nd Revised Sheet No. 50 is August 1, 1991. The proposed effective date for Substitute Third Revised Sheet No. 50 is March 29, 1992.

CNG states that the purpose of this filing is to correct the tariff sheet and supporting workpapers originally filed on February 27, 1992, as directed by Ordering Paragraph A of the Commission's March 27, 1992 order in this proceeding.

CNG states that these sheets reflect the correction of CNG's error in interest calculations related to flow-through to CNG's customers of refunds provided in Texas Gas Transmission Corporation's January 16, 1992 filing in Docket No. RP91-61. In addition, CNG proposes First Revised 2nd Revised Sheet No. 50 to recognize appropriate billing adjustments to be made to CNG's customers to reflect the July, 1991 refund to CNG from Texas Gas Transmission Corporation in that same docket.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during

regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 23, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-9296 Filed 4-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-2-001]

East Tennessee Natural Gas Co.; Compliance Filing

April 16, 1992

Take notice that on April 14, 1992, East Tennessee Natural Gas Company (East Tennessee) tendered for filing the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Revised Quarterly PGA—Effective April 1, 1992

Substitute Eighteenth Revised Sheet No. 4
Substitute Eighteenth Revised Sheet No. 5

Revised Flex PGA—Effective April 1, 1992

Substitute Nineteenth Revised Sheet No. 4
Substitute Nineteenth Revised Sheet No. 5

East Tennessee states that in the Commission's March 30, 1992, letter order it directed East Tennessee to revise its quarterly PGA effective April 1, 1992 to (1) reflect the proper commodity gas rate current adjustment and (2) to correct the rate of its pipeline supplier. East Tennessee states that both of the required changes have been made to the above referenced tariff sheets.

East Tennessee states that copies of the filing has been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 23, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-9295 Filed 4-21-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed Week of March 13 Through March 20, 1992

During the Week of March 13 through March 20, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 13 through March 20, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 16, 1992	Mark S. Boggs, Delta, CO	LFA-0195	Appeal of an information request denial. If granted: The February 24, 1992 Freedom of Information Request Denial issued by the Oak Ridge Field Office would be rescinded, and Mark S. Boggs would receive access to DOE information.
Mar. 17, 1992	Smith Wholesalers, Inc., Atlanta, TX	LEE-0040	Exception to the reporting requirements. If granted: Smith Wholesalers, Inc. would not be required to file Form EIA-782B. "Reseller/Retailer's Monthly Product Sales Report."
Mar. 18, 1992	Judith Weaver, Cleveland, OH	LFA-0196	Appeal of an information request denial. If granted: The February 24, 1992 Freedom of Information Request Denial issued by the Oak Ridge Field Office would be rescinded, and Judith Weaver would receive access to documents relating to her husband's pending Worker's Compensation death claim.
Jan. 28, 1992	Empire/Odessa LPG Transport, Inc., Washington, DC	RR335-1	Request for modification/rescission in the refund proceeding. If granted: The January 15, 1992 Decision and Order (Case No. RF335-33) issued to Odessa LPG Transport, Inc. would be modified regarding the firm's application for refund submitted in the Empire refund proceeding.
Mar. 20, 1992	Gulf/Kirby's Gulf, Atlantic Beach, FL	RR300-135	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 3, 1992 dismissal letter (Case No. RF300-12927) issued to Kirby's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund.
Mar. 20, 1992	The Denver Post Denver, CO	LFA-0197	Appeal of an information request denial. If granted: The February 24, 1992 Freedom of Information Request Denial issued by the Rocky Flats Office would be rescinded, and the Denver Post would receive access to DOE information.

Date received	Name of refund proceeding/name of refund application	Case No.
Mar. 16, 1992	Isenberg Enterprises	RF342-168
Do	Al Isenberg's Super 100	RF342-169
Do	Great Plains Gas Division	RF340-94
Mar. 17, 1992	Joe's Texaco	RF321-18516
Do	7-11 Service	RF321-18517
Do	Gencarelli Oil Co., Inc.	RF315-10187
Do	Miars Car Care Center, Inc.	RF321-18518
Do	Triangle Oil Co.	RF321-18519
Mar. 20, 1992	G&M Texaco	RF321-18521
Do	Larsen's Texaco	RF321-18522
Do	Industrial Fuels	RF321-18523
Mar. 18, 1992	Odessa L.P.G. Transport, Inc.	RF340-95
Mar. 19, 1992	Mike's Truckstop, Inc.	RF321-18520
Mar. 18, 1992	State Escrow Distribution	RF302-13
Mar. 19, 1992	Petroleum Fuels Co.	RF340-96
Do	Elliott Petroleum Co.	RF340-97
Do	Wisconsin Electric Power Corp.	RF342-170
Mar. 20, 1992	Terry's Clark Station	RF342-171
Mar. 13, 1992 thru Mar. 20, 1992	Crude oil applications received	RF272-91964 thru RF272-92007
Do	Gulf Oil refund applications received	RF300-19810 thru RF300-19832
Do	Atlantic Richfield applications received	RF304-12920 thru RF304-12937

[FR Doc. 92-9405 Filed 4-21-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 10 Through February 14, 1992

During the week of February 10 through February 14, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Cox Newspapers, 2/10/92, LFA-0180.

Cox Newspapers filed an Appeal from a determination issued by the Director of Reference and Information Management concerning a request for information which it submitted under the Freedom of Information Act. Cox Newspapers maintained that the itinerary which it received was not responsive to its request. The DOE determined that the itinerary which was released to Cox Newspapers was responsive to its request. The DOE stated that if Cox Newspapers wants information of a broader nature than it originally requested, it may file a new request. Accordingly, the Appeal was denied.

Refund Applications

Mesa Limited Partnership, 2/10/92, RF321-29709.

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Mesa Limited Partnership based on its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant, a crude oil producer, was an end-user of the refined petroleum products and based its claim on a presumption of injury for end-users. A group of 28 States and two territories (the States) filed a statement of objection challenging Mesa's application. The DOE found that Mesa neither operated a refinery nor resold petroleum products, and concluded that the States' filing was insufficient to rebut the presumption of injury. Therefore, Mesa's Application for Refund was granted. The refund granted to Mesa was \$17,904.

Rohm and Haas Co., Engelhard Corp., 2/10/92, RF272-25263, RD272-25263, RF272-28348, RD272-28348.

Rohm & Haas Co. (R&H) and Engelhard Corp. (Engelhard) each filed an application for refund as an end-user of refined petroleum products in the Subpart V crude oil refund proceeding. Both firms manufactured specialty chemicals and other products for industry and agriculture. Each firm demonstrated the volume of its claim by consulting invoices, financial statements, and asphalt plant production records or by making reasonable estimates. A group of state governments filed statements of objections to the firms' claims, and provided econometric evidence concerning the manufacturing and

chemical industries as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that either firm had been able to pass on the crude oil overcharges to its customers, and found that the States' econometric evidence failed to properly address the individual situations of the applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as R&H and Engelhard were injured by crude oil overcharges. The DOE granted R&H a refund of \$335,376 based on its approved purchases of 444,220,544 gallons of petroleum products, and granted Engelhard a refund of \$72,165 based on its purchases of 90,206,776 gallons. The States' related Motions for Discovery were denied.

Shell Oil Co./Magnatex Corp. Starr Gas Co., 2/10/92, RF315-10152, RF 315-10155.

The DOE issued a Decision and Order concerning two competing Applications for Refund filed in the Shell Oil Company (Shell) Subpart V special refund proceeding. Both of the submissions were based upon the purchases of Shell refined products made during the refund period by Starr Gas Company of Midland, Texas (Starr). On October 23, 1990, the OHA granted Starr a refund of \$4,150 (\$3,181 in principal and \$969 in interest) based on Starr's purchases of 14,075,671 gallons of Shell petroleum products. See *Shell Oil Company/Laughlin Oil Co., et al.* (Case Nos. RF 315-52969 *et al.*). The Starr

application was filed by McMickle and Edwards on behalf of Starr and stated that there had been no change in ownership during or since the consent order period. On August 15, 1991, Wilson, Keller & Associates filed an Application for Refund on behalf of the Magnatex Corporation (Magnatex) based upon the same 14,975,671 gallons of Shell petroleum products purchased by Starr. It was discovered that on July 20, 1984, the assets of Starr Gas Company and its affiliate, Fidelity Oil, were purchased by Starr-Fidelity, on March 18, 1985 a corporation named West Texas Gas, Inc. (West Texas) purchased assets of Starr Gas and the right to use the name Starr Gas Company. The right to a Shell refund was not among the assets purchased by West Texas. According to the Magnatex application, Starr was a wholly-owned subsidiary of Magnatex from 1972 until Starr was liquidated on April 17, 1986. Magnatex purchased Starr in May 1972 and Magnatex was the owner of one hundred percent of the common stock of Starr until the corporation was dissolved. Magnatex was clearly the proper recipient of any refund based

upon Starr's Shell purchases. The DOE accordingly ordered McMickle & Edwards and Starr Gas Company to repay the entire refund of \$4,150. It granted Magnatex Corporation a refund of \$4,509 (\$3,181 in principal and \$1,328 in interest), based on its approved purchases of 14,075,671 gallons of Shell products.

Shell Oil Co./Murson, Inc. Forestville Shell, 2/10/92, RF315-8735, RF315-8902.

The DOE issued a Decision and Order concerning the Applications for Refund filed in the Shell Oil Company special refund proceeding by two resellers of covered Shell petroleum products during the consent order period: Murson, Inc. and Forestville Shell. Murson, Inc., and Forestville Shell substantiated that they purchased 4,315,953 gallons and 4,319,716 gallons of Shell product. Accordingly, Murson, Inc., was granted a principal refund of \$975 plus \$407 in interest, for a total refund of \$1,382. Forestville Shell received a principal refund of \$976, plus \$407 in interest for a total refund of \$1,383. The total refund granted to both firms is \$2,765

(comprised of \$1,951 in principal and \$814 in interest).

In addition, the Decision set a final deadline for filing applications in the Shell refund proceeding. The DOE commenced accepting refund applications on January 13, 1989, more than three years ago. Notice of this proceeding was published in the *Federal Register* on January 23, 1989, 54 Fed. Reg. 3124 (1989). The DOE has previously accepted applications after the deadline if the applicant could demonstrate good cause for its lateness. However, eligible applicants have now been provided with more than ample time to file. Therefore, the DOE will not accept applications in the Shell refund proceeding that are postmarked after April 1, 1992.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bemidji School District et al	RF272-78806	02/14/92
Citronelle-Mobile Gathering/Gray Textiles Corp	RF336-31	02/14/92
Duro Finishing Corp	RF 336-32	
Enron Corporation/Wieck Bros. Oil Co	RF340-17	02/12/92
Ideal Basic Industries, Inc	RF272-23514	02/13/92
Colonial Sand & Stone Co., Inc.	RF272-29832	
Ideal Basic Industries, Inc	RD272-23514	
Colonial Sand & Stone Co., Inc.	RD272-29832	
Milliken and Company, Inc.	RC272-155	02/14/92
Quintana Energy Corp./Coastal Refining & Marketing, Inc.	RF332-3	02/12/92
Belcher Oil Company	RF332-4	
The Coastal Corporation	RF332-5	
Coral Petroleum, Inc. Creditors' Trust	RF332-8	
Shell Oil Company/B&C LP Gas Company	RF315-0142	02/10/92
Texaco Inc./Downtown Texaco	RF321-18435	02/10/92
Texaco Inc./Foster's Texaco et al	RF321-3155	02/14/92
Texaco Inc./Grant's Texaco et al	RF321-1550	02/14/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Beatty's Gulf Service	RF300-18452
Bergie's Arco	RF304-10348
Biddy's Grocery	RF300-14989
Billie Pirner Garde	LFA-183
Bobby Ray Scoggins	RF300-17762
Castoro GMC Truck Co., Inc.	RF307-10211
Leo's Service et al	RF321-10560
Leon H. Gill, Jr.	RF300-19345

Name	Case No.
Range Gulf	RF300-18809
Uresk Service Corp.	RF300-18761
Warren Exxon Servicenter	RF307-10210

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: April 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-9406 Filed 4-21-92; 8:45 am]

BILLING CODE 8450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34028; FRL 4061-1]

Pesticide Reregistration Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that there will be a 2-day workshop to present and discuss issues affecting the pesticide

reregistration process. The workshop is open to the public, but seating capacity is limited to about 350.

DATES: Two optional pre-conference sessions will be offered on Tuesday, May 26, 1992, from 2 p.m. to 5 p.m. The workshop will be held on Wednesday, May 27, 1992, from 8 a.m. to 5 p.m., and Thursday, May 28, 1992, from 9 a.m. to 12 noon.

ADDRESS: The pre-conference sessions and workshop will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202. Telephone: (703) 418-6800.

Copies of the documents and minutes of the workshop that the Agency will be preparing may be obtained by contacting: By mail: Public Response and Program Resources Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1128 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: For information on the workshop schedule, location and reservations, (by mail): Marilyn Millane, Walcoff and Associates, 635 Slaters Lane, suite 400, Alexandria, VA 22314. Telephone: (703) 684-5588, Fax: (703) 548-0426.

For information on the workshop agenda, presentations, and format, (by mail): Lois A. Rossi, Chief, Reregistration Branch, Special Review and Reregistration Division (H-7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703) 308-8080, Fax: (703) 308-8773.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to present to interested parties for discussion and input certain issues affecting the pesticide reregistration process. The 1988 FIFRA amendments require the reregistration of all pesticides registered prior to November 1, 1984. As EPA enters its third year of implementation, the Agency has made significant progress in creating the basic framework for delivering the program. However, many important issues remain. EPA hopes to use this forum to encourage input and constructive debate toward solutions. The workshop will feature progress reports, communication materials, break-out sessions, and opportunities to meet and communicate with individuals involved in the reregistration program from government,

industry, grower groups, the public and the media.

Pre-conference sessions will include: (1) An overview of the reregistration process, and (2) neurotoxicity and ocular effects testing.

The workshop agenda calls for presentation of the following topics: (1) Study rejection rates; (2) ecological effects and environmental fate data requirements and risk methodologies; (3) health risk data requirements and assessments; (4) product reregistration; and (5) grower groups' reregistration issues and opportunities.

Any member of the public not able to attend, but wishing to submit written comments, should contact Lois A. Rossi at the address or the phone number given above. Interested parties may file written statements before the meeting or within 30 days of issuance of the meeting documents and minutes.

All information submitted before or after the workshop will be included in the public docket. The public docket will be available for public inspection in room 1128 Bay, CM#2, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

People interested in attending the workshop should register as soon as possible. Because of space limitations, participation is limited and reservations will be processed on a first-come, first-served basis.

Dated: April 16, 1992.

Daniel B. Barolo,
Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-9388 Filed 4-21-92; 8:45 am]

BILLING CODE 6560-50-F

[FIFRA Docket Nos. 646, et al.; FRL-4125-8]

Pesticide Products Containing Ethylene Bisdithiocarbamates (EBDCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Objections and request for hearing.

Notice is hereby given, pursuant to section 164.8 of the Rules of Practice governing hearings under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*, that objections have been filed and a hearing has been requested by certain persons adversely affected by the Administrator's notice of intent to cancel the registrations of pesticide products containing ethylene bisdithiocarbamates (EBDCs) published in the *Federal Register* on March 2, 1992, 57 FR 7484. These proceedings have

been consolidated for hearing by order of the Chief Administrative Law Judge dated April 2, 1992.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these proceedings on file with the Hearing Clerk, United States Environmental Protection Agency, (Mail Code A-110); room 3708, 401 M Street, SW., Washington, DC 20460 (Tel No. 202-260-4865).

Dated: April 13, 1992.

Gerald Harwood,
Senior Administrative Law Judge.

[OPP-30332; FRL 4058-3]

Folpet; Notice of Intent to Delete Certain Uses and Directions for Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: This Notice announces that Makhteshim-Agan (America) Inc., the registrant of the technical active ingredient folpet, has requested to amend its registrations of Folpet 50-W (EPA Reg. No. 11678-51) to delete all uses except for avocados in Florida. The uses to be deleted include apples, crabapples, blackberries, boysenberries, dewberries, loganberries, raspberries, cantaloupe, muskmelons, honeydew melons, watermelons, summer squash, pumpkins, winter squash, blueberries, huckleberries, celery, cherries (red tart), citrus (oranges, grapefruit, lemons, limes, tangelos, tangerines), cranberries, cucumbers, grapes, gooseberries, currants, lettuce, onions, garlic, leeks, shallots, tomatoes, roses, chrysanthemums, iris, carnations, zinnias, marigolds, asters, phlox, snapdragons, poinsettia (greenhouse), and azalea cuttings.

DATES: These deletions will become effective upon publication of this Notice in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: By mail: Venus Eagle, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Reregistration Branch, Crystal Station #1, WF33B5, 2805 Jefferson Davis Highway, Arlington, Virginia, (703) 308-8045.

SUPPLEMENTARY INFORMATION: A Registration Standard for folpet was issued in June, 1987. At the time, folpet was registered for a variety of uses including terrestrial and aquatic food

crops. The only uses that were supported initially by the registrant were industrial uses in "paints, stains, coatings, and plastics." A Notice of Intent to Suspend was issued for failure to commit to submit supporting data for products with food uses. Registrants of all products that contained food uses on their label either dropped the food uses or voluntarily canceled their products, except for two products belonging to Central Chemical Corporation. These two registrations were subsequently suspended. Makhteshim-Agan purchased these two suspended end-use labels (EPA Reg. Nos. 11678-51, and 11678-52) from Central Chemical Corporation in July, 1990. In October, 1991, Makhteshim submitted a battery of toxicology, environmental fate, worker exposure and residue chemistry studies in support of the avocado use in Florida only. Makhteshim requested that EPA lift the suspension for EPA Reg. No. 11678-51, and delete all uses except for use on avocados in Florida. Under section 6(f)(1)(A) of FIFRA, as amended, a registrant can request that its pesticide registrations be voluntarily canceled or amended to terminate one or more uses. FIFRA, as amended, requires, for a minor agricultural use, a 90-day comment period from the date of publication of a request in the Federal Register before the request can be approved or rejected. However, FIFRA provides that this 90-day comment period may be waived upon request of the registrant. Makhteshim-Agan has requested that the Agency waive the comment period. The Agency is waiving the 90-day comment period for Makhteshim-Agan's product, EPA Registration No. 11678-51, and the use deletions will be effective upon publication of this Notice.

Dated: April 13, 1992.

Daniel B. Barolo,
Director, Special Review and Reregistration
Division, Office of Pesticide Programs.

[FR Doc. 92-9227 Filed 4-21-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4125-7]

Superfund; Notice To Extend Comment Period, Hastings Ground Water Contamination Site, NE

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period for proposed De Minimis Settlement under 122(g), Colorado Avenue Subsite.

SUMMARY: The United States Environmental Protection Agency is

reopening the comment period to submit comments on the proposed de minimis administrative settlement for the Colorado Avenue Subsite to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9822(g). Notice of settlement was published in the Federal Register on July 10, 1991 (56 FR 31405).

DATES: Written comments must be provided on or before April 27, 1992.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Colorado Avenue Subsite of the Hastings Groundwater Contamination Site, Hastings, Nebraska, EPA Docket No. VII-90-F-0025.

FOR FURTHER INFORMATION CONTACT: Audrey Asher, United States Environmental Protection Agency, Office of Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7255.

Morris Kay,

Regional Administrator.

[FR Doc. 92-9383 Filed 4-21-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59936; FRL 4060-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 5 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-106, 92-107, April 13, 1992.

Y 92-108, 92-109, April 14, 1992.

Y 92-110, April 16, 1992.

FOR FURTHER INFORMATION CONTACT:

David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-106

Manufacturer. Confidential.

Chemical. (G) Polyurethane polymer.

Use/Production. (G) Paint. Prod. range: Confidential.

Y 92-107

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

Y 92-108

Importer. Confidential.

Chemical. (G) Polyurethane adhesive.

Use/Production. (S) Adhesive for home, school, and office. Import range: 10,000-20,000 kg/yr.

Y 92-109

Manufacturer. Eastman Chemical Company.

Chemical. (S) 1,3-Benzenedicarboxylic acid, dimethyl ester; 2-(2-hydroxyethoxy)ethanol; 1,4-cyclohexanedimethanol.

Use/Production. (S) Printing ink component. Prod. range: Confidential.

Y 92-110

Manufacturer. Amoco Chemical Company.

Chemical. (G) Fatty and cyclo alkyl appended acrylate polymer.

Use/Production. (G) Petroleum treatment chemical. Prod. range: Confidential.

Dated: April 16, 1992.

Steve Newburg-Rinn,
Acting Director, Information Management
Division, Office of Pollution Prevention and
Toxics.

[FR Doc. 92-9387 Filed 4-21-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION**Public Information Collection Requirements Submitted to Office of Management and Budget for Review**

April 15, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0332.

Title: Section 76.614, Cable television system regular monitoring.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirements.

Estimated Annual Burden: 7,000 recordkeepers; 1.43 hours average burden per recordkeeper; 10,010 hours total annual burden.

Needs and Uses: Section 76.614 requires that cable TV systems operating on aeronautical frequencies which were requested or granted for use after 11/30/84, provide for a program of regular monitoring for signal leakage and maintain a log showing the date and location of each leakage source identified, the date on which the leakage was repaired, and the probable cause of the leakage. Incorporation of the monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally meet the monitoring requirement. The data is used by cable TV systems and the FCC to prevent, locate and eliminate harmful interference as it occurs, to help assure safe operation of aeronautical and marine radio services and to minimize the possibility of interference to these safety-of-life services. If this collection information was not conducted, there would be a greater likelihood of harmful interference to aeronautical and marine radio services; FCC efforts to

locate and eliminate such interference would be impaired; and potentially there would be a greater risk to safety-of-life and property.

OMB Number: 3060-0331.

Title: Section 76.615, Notification requirements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,900 responses; 0.5 hours average burden per response; 1,450 hours total annual burden.

Needs and Uses: Section 76.615(b) requires that cable TV system operators notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical frequency bands. Effective 7/1/90, such notification will include the cumulative signal leakage index (CLI) derived under 47 CFR 76.611(a)(1) or the results of airspace measurements derived under 47 CFR 76.611(a)(2) and a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. Also, after 7/1/90, this information shall be provided to the Commission each calendar year. This information is used by FCC staff to locate and eliminate harmful interference as it occurs, to help assure safe operation of aeronautical and marine radio services and to minimize the possibility of interference to these safety-of-life services. If this collection information was not conducted, there would be a greater likelihood of harmful interference to aeronautical and marine radio services; FCC efforts to locate and eliminate such interference would be impaired; and potentially there would be a greater risk to safety-of-life and property.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 92-9419 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1885]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

April 15, 1992.

Petitions for reconsideration and clarification have been filed in the Commission rule making Proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed May 7, 1992.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of parts 0, 1, 2 and 95 of the Commission's Rules to Provide Interactive Video Data Services. (Gen Docket No. 91-2)

Number of Petitions Received: 6.

SUBJECT: Amendment of part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions. (CC Docket No. 91-273)

Number of Petitions Received: 2.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 92-9358 Filed 4-21-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION**Agreement(s) Filed; Matson Terminals, et al.**

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, D.C. 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 section 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.: 224-200648.

Title: Matson Terminals/Stevedoring Services of America Terminal Agreement.

Parties:

Matson Terminals, Inc. ("Matson")
Stevedoring Services of America ("SSA").

Synopsis: Under the terms of the Agreement, SSA will repair certain container handling equipment for Matson at Matson's container terminal in Seattle, Washington.

Agreement No.: 202-011373.

Title: Trans-Atlantic Agreement.

Parties:

Atlantic Container Line AB,
Compagnie Generale Maritime (CGM),
Nedlloyd Lijnen BV,
Hapag Lloyd AG,
Sea-Land Service, Inc.,
A.P. Moller-Maersk Line,
Polish Ocean Lines,
Mediterranean Shipping Co.,
DSR/Senator Joint Service,
P&O Containers Limited,
Orient Overseas Container Line (UK) Ltd.,
Cho Yang Shipping Co.

Synopsis: The proposed Agreement will establish an association of ocean common carriers in the trade between Continental United States and Northern Europe. The parties will discuss and agree upon matters of mutual interest, including rates and a common tariff. The Agreement will also include a voluntary cooperative working arrangement with respect to space chartering, sharing container equipment, a capacity management program, allocation of cargo or revenue, and other activities within the scope of the Agreement described at section 4 of the Shipping Act of 1984.

Dated: April 16, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 92-9309 Filed 4-21-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of February 4-5, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting

held on February 4-5, 1992.¹ The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has remained sluggish. Total nonfarm payroll employment was little changed in December, and the civilian unemployment rate rose to 7.1 percent. Industrial production fell slightly in November and December, partly reflecting a sizable drop in motor vehicle assemblies. Consumer spending has been weak on balance in recent months amid continuing indications of depressed consumer confidence and essentially no growth in disposable income. Demand for business equipment has been uneven, while nonresidential construction has remained in a steep decline. Single-family housing starts continued to recover in December. The nominal U.S. merchandise trade deficit narrowed in November, and for October-November combined the trade balance improved substantially from the third-quarter rate. Wage and price increases have continued to trend downward.

Short-term interest rates have declined appreciably since the Committee meeting on December 17, while longer-term rates have registered mixed changes. The Board of Governors approved a reduction in the discount rate from 4-1/2 to 3-1/2 percent on December 20. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies rose slightly on balance over the intermeeting period.

After accelerating somewhat in the fourth quarter, M2 and M3 slowed in January, partly reflecting temporary distortions around year-end. For the year 1991, the expansion of both M2 and M3 is estimated to have been at rates a little above the lower ends of the Committee's ranges. Growth of total domestic nonfinancial debt appears to have been marginally above the lower end of the Committee's monitoring range for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to

¹Copies of the Record of policy actions of the Committee for the meeting of February 4-5, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful considerations to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from December through March at annual rates of about 3 and 1-1/2 percent, respectively.

By order of the Federal Open Market Committee, April 10, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92-9321 Filed 4-21-92; 8:45 am]

BILLING CODE 6210-01-F

BMC Bankcorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **BMC Bankcorp, Inc.**, Benton, Kentucky; to engage *de novo* through its subsidiary, United Commonwealth Bank, Federal Savings Bank, Murray, Kentucky, in operating a savings association pursuant to § 225.25(b)(9); and engage in the sale, as agent, of credit-related insurance sold in connection with extensions of credit made by the target savings association pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-9315 Filed 4-21-92; 8:45 am]

BILLING CODE 6210-01-F

Fleet/Norstar Financial Group, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. **Fleet/Norstar Financial Group, Inc.**, Providence, Rhode Island; to acquire 11.24 percent of the voting securities of The New York Switch Corporation, Hackensack, New Jersey, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-9316 Filed 4-21-92; 8:45 am]

BILLING CODE 6210-01-F

Meigs County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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 225.14) 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)).

Each 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 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 18, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. **Meigs County Bancshares, Inc.**, Decatur, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Meigs County Bank, Decatur, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Financial Institutions, Inc.**, Verona, Illinois; to become a bank holding company by acquiring 86.52 percent of the voting shares of Verona Exchange Bank, Verona, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **First Fidelity Bancorp, Inc.**, Oklahoma City, Oklahoma; to merge with City Bancorp of Norman, Inc., Norman, Oklahoma, and thereby indirectly acquire City National Bank & Trust Company, Norman, Oklahoma.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **Northwest Bancshares Corporation**, Benton, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Benton, Benton, Louisiana.

Board of Governors of the Federal Reserve System, April 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-9317 Filed 4-21-92; 8:45 am]

BILLING CODE 6210-01-F

Hugh Peterson, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the 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 May 13, 1992.

A. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Hugh Peterson, Jr.* and Mary Jane Peterson, Atlanta, Georgia; to each acquire 35 percent of the voting shares of NW. Services Corporation, Ringgold, Georgia, and thereby indirectly acquire Northwest Georgia Bank, Ringgold, Georgia.

Board of Governors of the Federal Reserve System, April 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-9318 Filed 4-21-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine, and Carbon Monoxide Content of 534 Varieties of Domestic Cigarettes

ACTION: Correction.

SUMMARY: In notice document 92-7460, beginning on page 11315 in the issue of Thursday, April 2, 1992, make the following correction:

On page 11319 in the 4th column, the nicotine values for 3 Marlboro cigarettes should be changed to read:

	NIC
Marlboro King F SP LT	0.8
Marlboro King F SP LT 25	0.9
Marlboro King F MP LT	0.8

Dated: April 13, 1992.

Donald S. Clark,

Secretary.

[FR Doc. 92-9355 Filed 4-21-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911 0087]

Service Corporation International; Revised Proposed Consent Order With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Revised proposed consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this revised proposed consent order, accepted subject to final Commission approval, would change the funeral homes that the respondent, a Houston, Texas, based

corporation, is required to divest in the Chattanooga, Tennessee area.

DATES: Comments must be received on or before May 22, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katharine B. Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA. 30367, (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(b) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, notice is hereby given that the following revised proposed consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Deborah K. Owen, Roscoe B. Starek III, Dennis A. Yao.

Revised Proposed Consent Order

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Service Corporation International ("SCI"), a corporation, and SCI, having been furnished with a copy of a draft of complaint that the Atlanta Regional Office proposed to present to the Commission for its consideration, and that, if issued by the Commission, would charge Service Corporation International with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent SCI, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the

said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 2.34 of its Rules, now in further conformity with the procedure prescribed in § 2.34 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, in the City of Houston, State of Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

REVISED ORDER

I.

As used in this order, the following definitions shall apply:

A. *SCI or respondent* means Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. *Sentinel* means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. *Funeral establishment* means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. *Assets and Businesses* includes assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of each funeral establishment;

4. All right, title and interest in the legal name "Lane Funeral Homes, Inc." within Hamilton County, Tennessee,

and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park ("Park"), thence easterly along the extension of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turning northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, thence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;

5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and

6. All books, records and files pertinent to any of the Properties to be Divested.

E. *Properties to be Divested* means the Assets and Businesses of the following funeral establishments:

1. Lane Funeral Homes, Inc., South Crest Chapel, Rossville, Georgia.
2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.
3. Lane Funeral Homes, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.
4. Wallis & Son Funeral Home, LaFayette, Georgia.
5. Sipple's Mortuary, Savannah, Georgia.

II.

It is Ordered That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continuation of the funeral establishments as ongoing viable enterprises and to remedy the lessening

of competition alleged in the Commission's complaint.

III.

It is Further Ordered That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV.

It is Further Ordered That:

A. If respondent has not divested the Properties to be Divested as required by Section II within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Section shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to section IV.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be

accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *provided, however*, That the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Section in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Section II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in section II; *Provided, however*, That if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall

be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in section IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V.

It is Further Ordered That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in *Sentinel Group, Inc.*, File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

VI.

It is Further Ordered That respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

VII.

It is Further Ordered That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with Section II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

VIII.

It is Further Ordered That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; and (d) Savannah, Georgia; *Provided, however*, That this prohibition shall not apply to the construction of new facilities by respondent.

IX.

It is Further Ordered, That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of Section VIII, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga,

Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; and (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *provided, however*, that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or the acquisition is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

X.

It is Further Ordered That, one year after the date this order becomes final and annually thereafter for nine (9) years, respondent shall file with the Commission a verified written report of its compliance with sections VIII. and IX. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations addresses, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

XI.

It is Further Ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representative of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent who may have counsel present, regarding such matters.

XII.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergency of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

By the Commission.

Analysis of Revised Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted a change in the agreement to a proposed consent order from respondent Service Corporation International ("SCI"). The complaint and original proposed consent order were placed on the public record on July 30, 1991.

The new proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint has not been changed since its publication. It alleges that, SCI's acquisition of Sentinel Group, Inc., violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, as amended, 15 U.S.C. 18. In the relevant geographic markets of Savannah, Georgia and its immediate environs; LaFayette, Georgia, and its immediate environs; and Hamilton County, Tennessee, and Rossville and Fort Oglethorpe, Georgia "the Chattanooga area"), both SCI and Sentinel owned funeral establishments and were actual competitors in the provision of funeral services. In the Savannah, Georgia area, Sentinel was the largest firm and SCI was one of the leading firms in the provision of funeral services. In the Chattanooga area, Sentinel and SCI were the two largest firms in the provision of funeral services. In the LaFayette, Georgia area, Sentinel and SCI were the only two providers of funeral services.

As the complaint alleges, the effects of the acquisition may have been to substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between SCI and Sentinel in the relevant markets; and (2) by significantly enhancing the possibility of collusion or

interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets. These effects increase the likelihood that firms have increased prices and restricted output in the relevant markets or will increase prices and restrict output both in the near future and in the long term.

The new proposed order only changes the funeral homes to be divested in the Chattanooga, Tennessee area. It requires that SCI divest one funeral establishment in Chattanooga, Tennessee, one funeral establishment in Rossville, Georgia, and one funeral establishment in Soddy Daisy, Tennessee. The original proposed order had required that SCI divest three funeral establishments in Chattanooga, Tennessee and one funeral establishment in Soddy Daisy, Tennessee. There are no changes in the divestitures required in the other two markets or in the other provisions of the original proposed consent.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-9356 Filed 4-21-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Organization, Functions and Delegations of Authority

Part A, chapter AT (Office for Civil Rights) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (45 FR 47479, 7/15/80; 45 FR 82721, 12/16/80; 47 FR 4348, 1/29/82; 51 FR 41554-57, 11/13/86; 54 FR 33613, 8/15/89 and 56 FR 56230, 11/1/91) is further amended to revise the organizational structure utilized in Region III to carry out OCR's functional responsibilities. The change is as follows: Delete paragraph 2 under B. Voluntary Compliance and Outreach Functions and replace with the following:

(Regions IV and VI carry out OCR's functional responsibilities under an organizational structure consisting of an Investigations Division and Voluntary Compliance and Outreach Division. Regions I, II, III, V, VII, VIII, IX and X

carry out both the investigative and voluntary compliance and outreach functions under an organizational structure consisting of operations branches (1, 2, or 3) whereby each branch has responsibility for the full range of activities under the Regional Manager. In Regions I, II, V, VII, VIII, and X, the Branch Chiefs report through a Division Director. In Regions III and IX, they report directly to the Deputy Regional Manager.)

Dated: April 14, 1992.

Arnold R. Tompkins,

Assistant Secretary for Management and Budget.

[FR Doc. 92-9373 Filed 4-21-92; 8:45 am]

BILLING CODE 4150-04-M

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation; Meeting

AGENCY: Agency for Health Care Policy and Research, Public Health Service, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, May 21, 1992, from 9 a.m. to 5 p.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on Friday, May 22, 1992, from 8:30 a.m. to 11:30 a.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Residence Inn Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary at (301) 227-8459.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for

Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the actions of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Linda H. Aiken, Ph.D.; Mr. Edward C. Bessey; Joseph F. Boyle, M.D.; Linda Burnes-Bolton, Dr. P.H.; Joseph T. Curti, M.D.; Gary L. Filerman, Ph.D.; Juanita W. Fleming, Ph.D.; David Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D.; Mr. Walter J. McNeerney; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio members. These members are: Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, May 21, 1992, the open portion of the meeting will begin at 9 a.m. with the call to order by the Council Chairman. The Administrator will report on AHCPR activities. The Chair of the Technology Assessment Task Force will present a report on the task force meeting held March 16-17, 1992. In the afternoon the AHCPR Administrator and other AHCPR staff will present an update on AHCPR's clinical guidelines development followed by an update by AHCPR staff on the medical effectiveness research program and primary care research activities. The Council will recess at 5 p.m.

On Friday, May 22, 1992, the Council will resume at 8:30 a.m. with a closed meeting to review grant applications. The meeting will then adjourn at 11:30 a.m.

Agenda items are subject to change as priorities dictate.

Dated: April 16, 1992.

J. Jarrett Clinton, M.D.

Administrator.

[FR Doc. 92-9413 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-90-M

Budget Management System Advisory Subcommittee; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of April 1992:

Name: Budget Management System Advisory Subcommittee.

Dates and Times: April 27, 1992, 1 p.m.

Place: Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose:

The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR) regarding the scientific and technical merit of a contract proposal submitted in response to a specific Request for Proposal. The purpose of this contract is to provide for the design, development, implementation, and documentation of a budget management system in an ORACLE RDBMS (Relational Database Management System) for the Financial Management Branch, AHCPR.

Agenda:

The session of this Subcommittee will be devoted entirely to the technical review and evaluation of a contract proposal submitted in response to a specific Request for Proposal. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposal that may be revealed during the session. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Management Systems and Services Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 277-8441.

Agenda items are subject to change as priorities dictate.

Note: Due to unforeseen circumstances arrangements for this meeting were delayed.

Consequently, more timely notification was not possible.

Dated: 16 April 1992.

J. Jarrett Clinton,

Administrator, AHCPR.

[FR Doc. 92-9412 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-90-M

Title XII of the Public Health Service Act, as Amended Hereafter, Trauma Care; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary under title XII of the Public Health Service Act, as amended hereafter, pertaining to Trauma Care. This delegation excluded the authority to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils. This delegation became effective upon the date of signature. In addition, I affirmed and ratified any actions taken by the Assistant Secretary for Health or subordinates, which involved the exercise of authorities contained in my delegation prior to the effective date.

Dated: April 13, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-9282 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-15-M

Alcohol, Drug Abuse, and Mental Health Administration

Centers for Human Resource System Development; Grant Applications for Developing State Mental Health Workforce

INSTITUTE: National Institute of Mental Health, HHS.

ACTION: Notice of request for application.

INTRODUCTION: This Request for Applications (RFA) is for Human Resource Development (HRD) grant applications that further the goal of developing a State mental health workforce necessary to implement the State Mental Health Services Plan Act of 1986 (Title V of Pub. L. 99-660, as amended in 1990 by Pub. L. 100-639). This Law requires States and Territories to plan and implement community-based care for the seriously mentally ill.

Under the statutory authority of section 303 of the Public Health Services Act (42 USC 242a), the NIMH HRD

program will award for fiscal year 1992 a single type of grant: Centers for Human Resource System Development. Centers for Human Resource System Development are awarded to a regional consortium of five or more contiguous States, or to an entity that is national in scope with provisions to serve all of the States and Territories. The goal of these Centers is to provide an environment where knowledge gaps concerning human resources are addressed by a group of States, or by a national body, to provide the information necessary to successfully implement the HRD requirements of a community-based mental health care system as expressed in the goals of title V in the States' Public Law 99-660 Plans.

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000: National Health Promotion and Disease Prevention. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 007-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Background

The HRD Program is responsible for improving the ability of States to increase the capacity and competence of the State workforce responsible for the provision of mental health services to adults with severe mental illness and to children and youth with severe and persistent emotional disorders including a focus on services for the persistently mentally ill whose disorders are comorbid with substance abuse disorders. The mental health workforce includes professionals and paraprofessionals, consumers, family advocates, case managers, and psychosocial rehabilitation specialists.

The HRD Program is an integral part of other NIMH programs oriented toward the improvement of community-based services including the Community Support Program (CSP), the Child and Adolescent Service System Program (CASSP), Mental Health Statistics Improvement Program (MHSIP), and the Protection and Advocacy (P&A) Program. Grantees in these other programs are encouraged to collaborate with HRD Centers in order to build support for HRD-related functions throughout their own program development.

Eligibility

Centers for Human Resource System Development: Any State, public or

private nonprofit organization is eligible to apply for a grant to establish either a regional or a national Center.

Applications for regional Centers must have letters of support that detail the kinds of commitments (direct financial support or in-kind support) that each participating State will make to the Center from the State mental health authority of each participating State. No less than five States shall be included in the application and the State must be contiguous.

In the application for a national Center, letters of support should be provided from relevant national organizations concerned with mental health human resource development issues such as the State mental health program directors, County mental health administrators, mental health consumers and family members, national professional organizations for mental health personnel, etc. These letters of support should insure facilitation and support of the Center proposal to the extent that the interests and objectives of each group are contemporaneous.

In the case of either the regional or the national Center application, a plan must also be provided that assures sufficient travel funds for equal or representative access to Center policy and decision-making meetings or events.

Availability of funds

Centers for Human Resource System Development: It is expected that approximately \$1,000,000 will become available for new awards under the terms of this RFA in fiscal year 1992, and approximately five awards will be made. The maximum level of support for either a regional or a national Center is \$250,000 per year of grant support.

Population of Concern

The population of concern for HRD grants includes adults with severe mental illness and children and youth with severe and persistent emotional disorders that seriously impairs functioning in the primary aspects of daily living such as interpersonal relations, living arrangements, or employment. Applicants should pay particular attention to the unique needs and special concerns of racial and ethnic minorities and women. It is Alcohol, Drug Abuse, and Mental Health Administration policy to include women and minorities in populations to be served, unless there is a compelling reason not to do so. The compelling reason may relate to circumstances such as disproportionate representation in terms of population size, age distribution, risk factors, incidence/prevalence, etc., of one gender or

minority/majority group. Applications should include a description of the composition of the proposed population for the project by gender and racial/ethnic group.

Program Requirements for Centers for Human Resource System Development Proposals

In fiscal year 1992, grants will be awarded to develop, implement, and evaluate Centers for Human Resource System Development to facilitate the participating States' capability to develop a program of human resource development activities that is responsive to the requirements of Title V of Public Law 99-660, and its amendments for the community-based care of adults with severe mental illness and children with severe and persistent emotional disorders. These Centers will accomplish their goal through the performance of four functions: (1) Assessment of the HRD needs represented in the title V of Public Law 99-660 Plans, Progress Reports, and NIMH Evaluations shared of the States participating in a given Center; (2) development of innovative systems of delivering knowledge, training, and technical assistance linked to those needs; (3) identification, dissemination, and planned change consultation regarding research findings pertinent to human resource development and "best practices" as identified in these States; and (4) development of human resource strategic planning skills for mental health administrators and program managers working with P.L. 99-660 within the States participating in a given Center.

The model for the Centers has been developed out of the patterns of practices that have been employed by the HRD multi-state projects that have been supported for the past 5 years. Each of the multi-state projects has successfully performed one or more of these functions in relation to clearly demonstrated needs. It is from these individual examples that the model for the Centers for Human Resource System Development has been built. The Centers will combine these functions as a systematic process to improve human resource development knowledge transfer and utilization toward the implementation of a comprehensive community-based system of mental health services delivery.

The application should address how the following functions will be developed, implemented, and evaluated:

1. Method(s) to periodically assess needs for knowledge, training, and technical assistance in the participating

States vis a vis ongoing human resource development activities in relation to title V of Public Law 99-660

2. Method(s) to screen emerging research findings in relation to the needs that have been identified and for developing these into "knowledge packages" in useful formats

3. System for identifying exemplary or "best practices" relevant to the needs that have been identified, including selection criteria and a method for data collection and evaluation related to the selection criteria

4. Strategy to determine the priority of these needs, and methods to follow through on how these needs are to be met (e.g. putting together a "knowledge package", training, on-site technical assistance, teleconferencing, consultation to facilitate the adoption/adaptation of exemplary programs or best practices, etc.)

5. Mechanism(s) to periodically exchange information gathered by the Center on a timely basis with participating States

6. System to select, orient, and periodically evaluate the effectiveness of a cadre of consultants in the areas identified in the needs assessment, who are also familiar with planned change consultation techniques

7. System to provide technical assistance to requesting organization through demonstrations, training materials, and on-site consultation

8. Center HRD database that is related to other databases, such as MHSIP, and that serves the HRD needs of related programs such as CSP, CASSP, PAL, and P&A

9. System for identifying, selecting, and providing management training for promising State and local mental health administrators on how to address systems change in the development of community-based mental health services

10. System of public academic linkages through the Center for serving education and training needs at the pre-service and in-service levels for the variety of specialized workforce groups represented in the Center participating States

11. Plan of evaluation that will help to determine if the Center is reaching its outcome goals, and that will help to identify problems that need to be further addressed

In addition to addressing each one of these functions, given that there will be a range of intensity and percentage of effort for each function, applicants shall present an overall strategic plan for how these functions will be accomplished, in what sequence, and toward what outcomes or goals. This strategic plan

should include, to the extent feasible and practical, each of the 10 requirements of Public Law 99-660 and its amendments. An outline should be developed regarding how technical assistance for each of the ten requirements will be provided. Each applicant will designate two of these requirements as their special area of in depth expertise, based on their review of the Public Law 99-660 plans for their participants. For these two areas, each applicant will outline how it will function as a resource, both for regional State participants and in addressing national needs.

Application Procedure

All applicants should use application form number PHS 5161-1 (revised 3/89) to request support for Human Resource Development activities described in the RFA. The title and the number of this RFA "Centers for Human Resource System Development" (MH92-12) should be typed in Item 10 on the face page of form 5161-1. Applications must be complete and contain all information needed for the initial review group (IRG) and Advisory Council review. No addenda will be accepted after submission unless specially requested by the Scientific Review Administrator (SRA) of the IRG.

Application kits containing instructions for completing the PHS-5161-1 may be obtained from the System Development and Community Support Branch at the address listed below: System Development and Community Support Branch, System Development and Planning Section, Room 11C-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

When applications are completed, the title of the RFA for which the proposal has been developed must be clearly stated on the return envelope.

Application requirements

Each proposal should be limited to 30 single space pages with a limitation on type size of no more than 15 characters to an inch, and 6 lines to an inch. The narrative section of 30 pages should include the elements and suggested page limits outlined below: Table of Contents; Abstract; Title V of P.L. 99-660/HRD Summary; Strategic Plan; Workplan; Network Plan; Public/Academic Linkages Plan; and Evaluation.

• *Table of Contents*: a clear delineation of the major areas of the narrative section of the application, subsections of major areas, and appendices (2 pages)

• *Abstract*: not to exceed three pages of the program narrative containing, at least, a description of the major goals

and anticipated outcomes for this project, an overall strategic plan for the full project period, proposed approach for addressing each of the project goals, proposed evaluation plan for assessing outcomes, for evaluation feedback, for engaging in knowledge transfer and utilization activities (3 pages)

• Title V of P.L. 99-660/HRD

Summary: a concise overview of what the workforce issues and plans are in the Public Law 99-660 State Plan(s) and the HRD implications of these, including which of these the project intends to address (4 pages)

• *Strategic Plan*: including the overall quantifiable/measurable short- and long-term goals and specific objectives, the environmental conditions and opportunities that form the basis for this proposal, and how the impact of the project will be evaluated (7 pages)

• *Workplan*: a detailed description of the approaches to be used in addressing project goals, responsible personnel, a detailed timeline for task accomplishment, a listing of proposed products to be developed during the course of the project (6 pages)

• *Network Plan*: a description of how coordination with the other appropriate NIMH services related programs, such as CSP, CASSP, MHSIP, and P&A, will be established and maintained, and for each of the key constituents that will have a role in the project life cycle (4 pages)

• *Evaluation*: a description of the approach that will be used to assess project outcomes related to the goals and objectives and the level of accomplishment for each of these goals and objectives, (with use of qualitative and quantitative methods), and a plan for a formative evaluation (4 pages)

The following information on budget, job descriptions, a cost breakdown for the evaluation plan, and supportive documentation is also requested, but it may be included in the Appendices:

• *Budget*: a detailed narrative description and justification of proposed budget.

• *Other Support* refers to all current or pending support related to this application—applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support", i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the

applicant organization certifies that the application information is accurate and complete. For your organization and key organizations that are collaborating with you in this proposed project, list all currently active support and any applications/proposals pending review or funding that relate to the project. *If none, state "none"*. For all active and pending support listed, also provide the following information:

- (1) Source of support (including identifying number and title).
- (2) Dates of the entire project period.
- (3) Annual direct costs supported/requested.
- (4) Brief description of the project.
- (5) Whether project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

- *Job Descriptions:* all key project positions, and how they will relate to one another and to State P.L. 99-660 personnel, including a proposed Table of Organization

- *Cost Breakdown for Evaluation Plan:* including consultation costs regarding the development of evaluation design(s), analytic and statistical measures, data collection estimates, and time estimates for data analysis and formatting of evaluation results for various user groups.

- *Supportive Documentation:* evidence that the climate and environment are conducive to the accomplishment of project goals, and letters of support that clearly state for what and how support will be given or how action will be taken on behalf of the project.

Intergovernmental Review

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact the State's single point of contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to Stephen J. Hudak. (See below for address).

The due date for State process recommendations is 60 days after the deadline for receipt of applications. NIMH does not guarantee to accommodate or explain State process recommendations that are received after the 60 day cut-off date.

Review of Applications

A dual review system is used to insure expert and objective review of the quality of applications. The first step, peer review for technical merit, is primarily by non-Federal experts comprising the initial review group. The second level of review is by the National Advisory Mental Health Council which addresses policy issues. Only applications recommended by Council may be considered for funding. Summaries of IRG discussion are sent to applicants following completion of the IRG review.

Review Criteria

Each grant application is evaluated on its own merits. The following criteria are used in the initial review:

1. Strength of the "goodness of fit" between the proposed project outcomes, goals, and objectives with the workforce plans contained in the State(s) Title V Public Law 99-660 Plan.
2. The comprehensiveness and feasibility/practicability of the strategic plan.
3. Appropriateness, feasibility, and cumulative track record of the methods, activities, and overall approach proposed for implementation.
4. The quality of the evaluation plan for assessing levels of accomplishment of project outcomes and specific achievement of goals and objectives, and for the feedback of findings to improve ongoing project operations.
5. The appropriateness and thoroughness of the plan for establishing and maintaining linkages with the various constituencies that will be involved in building a human resource development network.
6. Background and competence of project staff in the proposed areas of work.
7. Evidence of strong commitment and support from the State mental health authority(ies).
8. Appropriateness and suitability of proposed budget, facilities, and working conditions to support the project.
9. Strength/thoroughness of means of ensuring that each participating State has equitable access to and use of the Center technical, financial, and decision-making resources.

Receipt and review schedule

Receipt of application	Initial review	National Advisory Mental Health Council	Earliest award date
July 10, 1992.	August 1992.	September 1992.	September 1992.

Applications received after the above receipt date will not be accepted and will be returned to the applicant without review. The original and two (2) copies of the application should be submitted to: Division of Research Grants, NIH, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892 (if sent via overnight mail, the zip code to be used is 20816).

Because of the short time available for initial and Council review, it is suggested that an additional copy be sent directly to: Division of Extramural Activities, National Institute of Mental Health, 5600 Fishers Lane, Room 9C-15, Rockville, Maryland 20857.

Terms and Conditions of Support

Grants are awarded directly to eligible applicants. Funds may be used only for those expenses that are directly related and necessary to carry out the project, including both direct and allowable indirect costs. Funds must be expended in conformance with the Department of Health and Human Services cost principles, the Public Health Service Grants Policy Statement (revised 10/90) and conditions set forth in this document and on the Notice of Award. Federal regulations at Title 45 CFR Parts 74 and 92, general requirements concerning administration of grants, are applicable to these awards.

Period of Support

Centers for Human Resource System Development: Support may be requested for up to 5 years for Center grants. Annual awards will be made subject to continued availability of funds and progress achieved.

Stipends/trainee expenses are not available under this grant program.

Award Criteria

Applications recommended by the National Advisory Mental Health Council will be considered for funding on the basis of:

- Overall technical merit of the proposed project as determined by peer review.
- Evidence of input and support from the various HRD agencies/

constituencies involved in project implementation.

- Evidence of coordination with and support from other NIMH related projects such as CSP, CASSP, MHSIP, and P&A.
- Geographic distribution.
- Degree to which the proposed project will facilitate the movement toward a comprehensive community-based system of care.
- Availability of funds.

Further Information

Applicants are encouraged to discuss their planned proposal prior to submitting a formal grant application. Inquiries should be directed to: Susan Salasin, Director, State Human Resource Development Program or Maury Lieberman, Chief, System Development and Planning Section, System Development and Community Support Branch, Division of Applied and Services Research, National Institute of Mental Health, 5600 Fishers Lane, Room 11C-23, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443-4257.

Questions on grants management issues should be directed to: Stephen J. Hudak, Chief, Grants Management Section, National Institute of Mental Health, Parklawn Building, Room 7C-23, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4456.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Publication 96-511, OMB Approval Number 0937-0189.

(The Catalog of Federal Domestic Assistance number for this program is 93.244)

Joseph R. Leone,

Associate Administrator for Management Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-9414 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

National Center for Environmental Health and Injury; Meeting

The National Center for Environmental Health and Injury Control (NCEHIC), Centers for Disease Control (CDC), announces the following meeting.

Name: Workshop on Screening Methods for Thyroid Disease in Populations Near Nuclear Facilities.

Time and Date: 8:30 a.m.-2:30 p.m., May 14, 1992.

Place: Days Hotel at Lenox/Buckhead, 3377 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public for observation and comment, limited only by space

available. The meeting room accommodates approximately 35 people.

Purpose: Under a Memorandum of Understanding (MOU) with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. The thyroid gland has been shown to be a part of the body which may be particularly sensitive to radiation exposures. Thyroid diseases may therefore be a useful marker for assessing some of the risks for disease which may be associated with radiation exposures. To maximize the ability to accurately assess potential risks, reliable and reproducible thyroid disease screening methods are needed. Two screening methods, physical examination and ultrasound examination, are commonly used for thyroid disease studies, although it is not clear which method would be most useful for the most accurate estimate of risks for thyroid disease associated with radiation exposure.

An invited group of scientists representing the disciplines of clinical medicine, epidemiology and biostatistics, public health, and medical physics will discuss the applications of physical examination, ultrasound examination, and other screening methods to the study of thyroid disease in populations residing near nuclear facilities. Invited participants will provide CDC with their advice and comments as individual scientists. Information provided by the participants will be used by CDC in planning the epidemiologic research projects for inclusion of the Radiation-Related Epidemiologic Research Agenda, which CDC is developing as part of its responsibilities under the MOU with DOE.

At the conclusion of the meeting all attendees will have an opportunity to provide oral and/or written comments for the record.

For a period of 15 days following the meeting, through May 29, 1992, the official record of the meeting will remain open in order that additional material or comments may be submitted to be made part of the record of the meeting. Comments may be mailed to the contact person listed below.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul Garbe, D.V.M., M.P.H., Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEHIC, CDC, 1600 Clifton Road, NE., (F-28), Atlanta, Georgia 30333, telephone 404/488-4613 or FTS 236-4613.

Dated: April 13, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-9308 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 93E-0084]

Determination of Regulatory Review Period for Purposes of Patent Extension; RELAFEN®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for RELAFEN® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be

subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product RELAFEN®. RELAFEN® (nabumetone) is indicated for acute and chronic treatment of signs and symptoms of osteoarthritis and rheumatoid arthritis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for RELAFEN® (U.S. Patent No. 4,420,639) from Beecham Group p.l.c., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 3, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of RELAFEN® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for RELAFEN® is 4,220 days. Of this time, 2,077 days occurred during the testing phase of the regulatory review period, while 2,143 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: June 4, 1980. The applicant claims May 30, 1980, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 4, 1980, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: February 10, 1986. FDA has verified the applicant's claim that the new drug application (NDA 19-583) was submitted February 10, 1986.

3. The date the application was approved: December 24, 1991. FDA has verified the applicant's claim that NDA 19-583 was approved December 24, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 22, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 19, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 13, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-9265 Filed 4-21-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92E-0032]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mazicon®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Mazicon® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. Human: Patent for human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Mazicon®. Mazicon® (flumazenil) is indicated for the complete or partial reversal of the sedative effects of benzodiazepines in cases where general anesthesia has been induced and/or maintained with benzodiazepines, where sedation has been produced with benzodiazepines for diagnostic and therapeutic procedures, and for the management of benzodiazepine overdose. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Mazicon® (U.S. Patent No. 4,316,839) from Hoffmann-La Roche, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 6, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Mazicon® represented the first commercial marketing of the

product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Mazicon® is 2,557 days. Of this time, 2,182 days occurred during the testing phase of the regulatory review period, while 375 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: December 19, 1984. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was December 19, 1984.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: December 10, 1990. FDA has verified the applicant's claim that the new drug application (NDA 20-073) was filed on December 10, 1990.

3. The date the application was approved: December 20, 1991. FDA has verified the applicant's claim that NDA 20-073 was approved on December 20, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 4 years and 7 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 22, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 19, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 96th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the

Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 13, 1992.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 92-9270 Filed 4-21-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Blood Products Advisory Committee

Date, time, and place. May 28 and 29, 1992, 8:30 a.m., Parklawn Bldg., Conference Rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, May 28, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, May 29, 1992, 8:30 a.m. to 3 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFB-902), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-227-6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda--Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 22, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On May 28, 1992, the committee will hear and

discuss invalidation of test results when screening donor blood using licensed viral marker test kits. On May 29, 1992, the committee will hear discussion and recommendations on the issue of bacterial contamination of platelets.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above. The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 16, 1992.

Michael R. Taylor

Deputy Commissioner for Policy.

[FR Doc. 92-9319 Filed 4-21-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Revision; *Title of Information Collection:* State Medicaid Drug Rebate Program—Manufacturers; *Form Numbers:* HCFA-367, 367a, 367b, and 367c; *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal government for State to receive funding for drugs dispensed to Medicaid recipients. Manufacturers complete these forms to report the average manufacturer price of the drugs and, for

some drugs the best price at which they were sold; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 1,660; *Average Hours per Response:* 19.37; *Total Estimated Burden Hours:* 32,160.

2. *Type of Request:* Revision; *Title of Information Collection:* State Medicaid Drug Rebate Program; *Form Numbers:* HCFA-368 and HCFA-R-144; *Use:* State Medicaid agencies report to drug manufacturers and the Health Care financing Administration on the drug utilization for their State and the amount of rebate to be paid by the manufacturers; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 209; *Average Hours per Response:* 29.31; *Total Estimated Burden Hours:* 6,125.

3. *Type of Request:* Revision; *Title of Information Collection:* Home Health Agency (HHA) Medicare and Medicaid Survey Report Forms for HHA Conditions of Participation; *Form Numbers:* HCFA-1515, 1572, 36; *Use:* The Home Health Agency must meet Federal standards to participate in the Medicare/Medicaid programs as an HHA provider. State survey agencies use these forms to record information about patients' health and provider compliance with Federal requirements and to report findings to the Health Care Financing Administration; *Frequency:* Annually; *Respondents:* State/local governments and Federal agencies/employees; *Estimated Number of Responses:* 96,000; *Average Hours per Response:* 1.02; *Total Estimated Burden Hours:* 97,500.

4. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in BPD-718, Advance Directives (Medicare and Medicaid); *Form Numbers:* HCFA-R-10; *Use:* Certain Medicare and Medicaid providers and organizations are responsible for collecting and documenting in medical records whether or not an individual has executed an advance directive which states the individual's preference for health care in the event the individual is unable to do so; *Frequency:* Not applicable; *Respondents:* State/local governments, individuals/households, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 750,000 (recordkeeping).

Additional Information or Comments: Call the Reports Clearance Officer on 410-966-2088 for copies of the clearance request packages. Written comments

and recommendations for the proposed information collections should be sent directly to the following addresses: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: April 13, 1992

J. Michael Hudson,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92-9372 Filed 4-21-92; 8:45 am]

BILLING CODE 4110-03-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Sodium Azide

The HHS' National Toxicology Program (NTP) announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of sodium azide, a white crystalline solid used in the manufacture of the explosive lead azide. It is the principal chemical used to generate nitrogen gas in automobile safety airbags and airplane escape chutes and is a broad-spectrum biocide used in both research and agriculture.

Toxicology and carcinogenesis studies were conducted by administering sodium azide at doses of 0, 5, or 10 mg/kg in distilled water by gavage to groups of 60 rats of each sex for 5 days per week for 103 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity¹ of sodium azide in male or female F344/N rats administered 5 or 10 mg/kg.

Sodium azide induced necrosis in the cerebrum and thalamus of the brain in both male and female rats.

The Study Scientist for this bioassay is Dr. Kamal Abdo. Questions or comments about the contents of this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819; FTS: 629-7819.

Copies of Toxicology and Carcinogenesis Studies of Sodium Azide in F344/N Rats (Gavage Studies) (TR 389) are available from the National

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone: 1-800-553-6847. The document order number is PB92-135615.

Dated: April 14, 1992.

Kenneth Olden,

National Toxicology Program.

[FR Doc. 92-9385 Filed 4-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Titanocene Dichloride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of titanocene dichloride, a chemical which has limited use as a cocatalyst for polymerization reactions.

Toxicology and carcinogenesis studies of titanocene dichloride were conducted by administering the chemical at doses of 0, 25 or 50 mg/kg in corn oil by gavage to groups of 60 F344/N rats of each sex for 5 days a week for 104 weeks.

Under the conditions of these 2-year gavage studies, there was equivocal evidence of carcinogenic activity¹ of titanocene dichloride in male F344/N rats based on a marginal increase in the incidence of forestomach squamous cell papillomas, squamous cell carcinoma, and basosquamous tumor benign. There was equivocal evidence of carcinogenic activity of titanocene dichloride in female F344/N rats based on a marginal increase in the incidence of forestomach squamous cell papillomas.

Nonneoplastic lesions associated with the administration of titanocene dichloride for up to 2 years included erosions and inflammation of the gastric mucosa, hyperplasia and metaplasia of the fundic glands with fibrosis of the lamina propria in the glandular stomach, and acanthosis (hyperplasia) and hyperkeratosis of the forestomach epithelium.

The study scientist for this bioassay is Dr. June Dunnick. Questions or comments about the contents of this technical report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-4811; FTS: 629-4811.

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effects ("no evidence"), and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

Copies of Toxicology and Carcinogenesis Studies of Titanocene Dichloride in F344/N Rats (Gavage Studies) (TR 399) are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone: 1-800-553-6847. The document order number is PB92-129576/AS.

Dated: April 14, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92-9291 Filed 4-21-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Last Chance *Townsendia* (*Townsendia Aprica*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Last Chance *Townsendia* (*Townsendia aprica*). This plant occurs mostly on public lands administered by the Bureau of Land Management, National Park Service, and Forest Service in Emery, Sevier, and Wayne Counties in central Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before June 22, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Written comments and materials regarding this draft recovery plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see "ADDRESSES" above) at telephone (801) 524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION: Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

Townsendia aprica is currently known from 14 small populations (most are only about an acre in size) in Emery, Sevier, and Wayne Counties in central Utah. The majority of the populations are located on Federal lands managed by the Bureau of Land Management (Moab and Richfield Districts), by the National Park Service in Capitol Reef National Park, and by the Forest Service in Fish Lake National Forest.

Townsendia aprica was listed under the Act as a threatened species on August 21, 1985 (50 FR 33734), due to current and potential threats to the species' population and habitat from mineral and energy development, road building, and livestock trampling. The initial goal of the recovery plan is to maintain viable populations to protect the species' survival in the foreseeable future. Because of the species' restricted distribution and limited habitat, it is uncertain if delisting will eventually be possible. Initial recovery efforts will focus on protecting the species from activities that destroy its habitat. Additional recovery efforts will focus on conducting habitat inventories and minimum viable population studies.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified in the "DATES" section above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 10, 1992.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 92-9415 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Wildlife and Plants: Notice of Continued Environmental Review for the Florida Panther Captive Breeding Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On February 5, 1992, the Fish and Wildlife Service Regional Office in Atlanta, Georgia, issued a "Statement of Policy on Continued Environmental Review" for the Florida Panther Captive Breeding Program. The full text of the policy statement is set out below under the heading **SUPPLEMENTARY INFORMATION**.

DATES: The policy statement on continued environmental review was adopted on February 5, 1992.

ADDRESSES: Please send correspondence concerning this notice to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. W.T. Olds, Jr., Assistant Regional Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, at the above address, telephone 404/331-6343 or FTS 841-3580; or Mr. Dennis B. Jordan, Florida Panther Recovery Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 23611-0307, telephone 904/392-1861.

SUPPLEMENTARY INFORMATION:**Background**

The U.S. Fish and Wildlife Service (Service) will soon initiate the establishment of a captive breeding population of endangered Florida panthers, as presented in the November 1991 Supplemental Environmental Assessment (Federal Register, Volume 56, Number 228, page 59958, November

26, 1991). Endangered species permits (section 10(a)(1)(A)) will be secured by the Florida Game and Fresh Water Fish Commission (Commission), White Oak Plantation, Lowry Park Zoo, Jacksonville Zoo, and Miami Metro Zoo before additional captures of panthers or any captive breeding activity occurs.

The Service will continue recovery activities in accordance with the approved Florida Panther Recovery Plan, June 22, 1987, Florida Panther Viability Analysis and Species Survival Plan, December 15, 1989, and other relevant documents. These recovery activities are carried out primarily by the Commission, Florida Department of Natural Resources, Southeast Region of the National Park Service (NPS), and the Service's Southeast Region.

The heads of the above agencies are collectively known as the Florida Panther Interagency Committee (FPIC). The FPIC usually meets at least two times a year to coordinate cooperative efforts to restore the panther to a nonendangered status in the wild. The FPIC is supported by a Technical Committee of biologists representing the four agencies which meets more frequently than the FPIC. All meetings of the FPIC and its Technical Committee are announced to the public in advance and are open to public participation in accordance with the government in the sunshine laws of the State of Florida.

The Service will continue to carry out peer review of various panther recovery activities (e.g., captive breeding, genetic management, habitat protection, reintroductions) through the Florida Panther Technical Advisory Council (Council) established by Florida law on June 22, 1983, as supplemented by this policy. The council, which was organized by the State of Florida as a component of the Commission, consists of five members (appointed by the Governor) with technical knowledge and expertise in research and management of large mammals. As provided for by State law, the Council's membership includes: (1) Two members representing State or Federal agencies responsible for management of endangered species; (2) two members having specific experience in research and management of large felines or large mammals from universities or associated institutions; and (3) one member, with similar expertise, from the public at large. Members are appointed on staggered 4-year terms. The current members of the Council are Dr. James N. Layne, Archbold Biological Station, Mr. John O. Pons, Florida Department of Natural Resources (Chair), and Dr. Melvin E. Sunquist, University of Florida. There are currently two

vacancies on the Council, which the State intends to fill in the near future. Under Florida law, the purpose of the Council is to: (1) serve in an advisory capacity on technical matters related to the panther recovery program and to recommend specific actions that should be taken; (2) review and comment on research and management programs to identify potential harm to the panther population; and (3) provide a forum for technical review and discussion of the status and development of the recovery program.

The Service will request that the Council review such topics as habitat protection plans, reintroduction sites or evaluation methods, removal of adults from the wild except in emergency situations, effects of removal of adults and/or kittens from the wild, and the protocol under which panthers will be maintained in captivity in order to maximize the chances of success of the captive breeding effort. The Council is provided access to all relevant scientific documents and data within the custody of the Service, including all documents within the administrative record. Privileged matter, including documents protected by the deliberative process, attorney-client, and attorney work product privileges, may, at the option of the Service, be excluded from the Council's review. All matters reviewed by the Council and responses provided by the Council are available to the public through existing public notice procedures within the State of Florida. The Service will also make all documents pertaining to the peer review effort, including the reports and comments of the Council members, available to the public. After the Council has completed the peer review process for any of the activities covered by this policy statement, the Service will notify the public, through notice published in the Federal Register, that such review has taken place and that all documents involved in such review are available for public inspection.

Each member of the Council will determine how the product of his or her review should be presented to the Service and the public. Peer review reports need not be presented as consensus advice.

The Service will consider all recommendations of the Council. (In addition, the Service considers all recommendations presented by outside experts, expert panels, and the public.) The Service will coordinate in good faith with the Council to submit issues for evaluation on a timely basis. The Service will give due consideration to the advice/recommendations derived

from the peer review process. If the Service chooses to take an action that differs significantly from that advised or recommended through the peer review process, the Service will advise the Council in writing of its reasons for taking such action. Such written statement(s) will be made part of the administrative record and will be available to the public.

Additional peer review of various recovery activities has been and will continue to be obtained by the FPIC and its technical committee by inviting various renowned scientific experts to participate in its deliberative meetings. Workshops have already been held on such topics as population viability analysis, species survival planning, mercury contamination effects, and genetic management.

In addition to the peer review process, the two Federal agencies (NPS and the Service) involved in panther recovery activities utilize the systematic, interdisciplinary planning process required by the National Environmental Policy Act (NEPA) of 1969, as amended, for major actions which are likely to have a significant effect on the quality of the human environment. For example, the Service has prepared environmental assessments for establishment of the Florida Panther National Wildlife Refuge and establishment of a captive breeding population. The NPS has prepared an environmental impact statement for the General Management Plan for Big Cypress National Preserve and an environmental assessment on the Fire Management Plan for the Everglades National Park. Future Federal actions will also utilize this systematic, interdisciplinary NEPA process. Examples include, but are not limited to, implementation of future habitat protection actions, selection of future new reintroduction sites, etc. In addition, the Commission has held public meetings and distributed informational packets to key contacts and the media for its experimental reintroduction program.

By December 1992, the FPIC will prepare and release, for public review and input, a draft habitat preservation plan for the existing wild population in south Florida. The draft plan will address lands considered essential for sustaining a viable population and the steps that the FPIC could take or could recommend others to take to help ensure the preservation and/or restoration of such habitat. The Council will be provided copies of the draft and will have access to the administrative record from which it was derived. All reports and recommendations received from the

Council or its members within 60 days after receiving the draft will be addressed by the Service (through the FPIC) in the preparation of the final plan. The target date for the final plan is May 30, 1993.

Any proposal to remove an adult Florida panther from the wild for captive breeding purposes will be referred to the Council for peer review, unless: (1) the panther has not reproduced in the wild over at least a 2-year time span due to known or suspected physiological problems and the Service does not believe that it will reproduce in the wild in the future; (2) the panther will contribute essential genetic material to the captive population; and, (3) removal of the panther will not likely have a significant adverse impact on the social structure of the wild population. If the above criteria are not met, the Service will provide 30 days' advance notice to the Council of its proposal to remove an adult panther from the wild for captive breeding purposes, unless an emergency exists that poses serious and immediate harm to the panther. The Service will address all reports and recommendations received from the Council and its members within this 30-day period. If the Council's peer review indicates disagreement with the need for removal of the adult, the Service will provide a written statement of reasons for carrying out the action that fully responds to the Council report. The public will promptly be notified (by press release) of any decision to remove an adult panther that does not satisfy the criteria set forth above, as well as the reasons for the removal decision.

Within 18 months from the date of this policy statement, the Service will prepare and release, for public review and input (within the context of NEPA scoping), a draft preliminary analysis of potential reintroduction sites, in both Florida and other Southeastern States, based on the information that is then available. The analysis will describe and rank potential reintroduction sites, discussing both their advantages and disadvantages insofar as the potential for panther survival, conservation, and recovery is concerned. With respect to the top three priority sites, the analysis will specifically discuss what steps will be proposed, on both a short- and long-term basis, to ensure that such sites are suitable for panther reintroduction. The analysis will also describe the actual and potential uses of such sites that are compatible with panther reintroduction, as well as the steps that will be proposed to eliminate or mitigate incompatible uses.

The Council will be provided copies of the draft preliminary analysis of potential reintroduction sites and will have access to the administrative record from which it was derived. All reports and recommendations received from the Council or its members within 60 days after receiving the draft will be addressed by the FPIC in the preparation of the final preliminary analysis of potential reintroduction sites, which will be issued no later than 2 years from the issuance of this policy statement.

The Council may request the opportunity for peer review of other biological issues pertaining to the recovery of the Florida panther. Such requests can be made in writing by any member of the Council and addressed to the Service's Regional Director in Atlanta. If the Service determines that it would further the purpose of Florida panther conservation to devote resources to the Council's request, peer review will be initiated, and the results of such review shall be addressed by the Service consistent with the process outlined above for other issues. If the Service declines to allow the Council to peer review any major issue pertaining to the recovery of the Florida panther, it will explain its reasons for that decision in writing and make its written explanation available to the Council. A brief notice will be published in the *Federal Register* to announce any Service decision not to allow peer review of a particular activity and to explain that the records supporting that decision are available for public inspection.

In 1994, the Service will cosponsor, with other interested organizations and agencies, a national conference on Florida panther conservation and recovery.

In order to respond prudently to new scientific information regarding the Florida panther's biological status and recovery needs, the Service reserves the authority to make changes in the peer review process described in this statement of policy. The Council and each interested governmental and non-governmental organization involved in the Florida panther recovery effort would be notified in writing of any changes in this policy and the reasons therefore. The Service will carry out a biennial review of the peer review process to determine its effectiveness and the need for any improvements or modifications. If, pursuant to State law, the Council ceases to exist during the time that panther recovery efforts are ongoing, the Service will utilize or establish a recovery team for peer

review that will perform the functions set forth in this policy statement.

Implementation of this policy is contingent on the availability of annual appropriated funds for the participating State and Federal agencies. The Service will make reasonable efforts to obtain the resources needed to implement this statement of policy.

Authority

This notice is issued under authority of the Endangered Species Act, 16 U.S.C. 1531-1544.

Dated: April 7, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-9395 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

National Earthquake Prediction Evaluation Council; Public Meeting

Pursuant to Public Law 92-463, effective January 5, 1973, notice is hereby given that an open meeting will be held beginning at 8:30 a.m. (local time) on Thursday, May 7, 1992, and continuing through Friday, May 8, 1992. The National Earthquake Prediction Evaluation Council will meet at the Marriott Hotel on the Waterfront in Portland, Oregon.

(1) *Purpose.* To address the current understanding of the earthquake hazards in the Pacific Northwest, particularly with regard to the possibility of future subduction zone earthquakes.

(2) *Membership.* The Council is chaired by Dr. Thomas V. McEvilly and is composed of scientists from academic and government institutions.

(3) *Agenda.* Review of state of knowledge of earthquake hazards in the Pacific Northwest, assessment of new methods in earthquake prediction, and evaluation of the prediction experiment underway at Parkfield, CA.

For more detailed information about the meeting, please call Dr. Robert L. Wesson, Chief, Office of Earthquakes, Volcanoes, and Engineering, Reston, Virginia, 22092, (703) 648-6714.

Dallas L. Peck,

Director, U.S. Geological Survey.

[FR Doc. 92-9307 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[WO-320-02-4211-02-262F]

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 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 requirement should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0060), Washington, DC 20503, telephone number 202-395-7340.

Title: Application for Transportation and Utility Systems and Facilities on Federal Lands, Public Law 96-487 (Also applicable for 43 CFR 2800 and 2880).

OMB Approval Number: (1004-0060).

Abstract: Respondents supply information as to their identity and address and the nature, location and potential impacts of the proposed facility. The information enables the using agency to identify and communicate with the applicant and to locate and evaluate the effect of the proposed facility on the environment and other land uses.

Bureau Form Number: SF-299.

Frequency: On occasion.

Description of Respondents:

Applicants for rights-of-way on Federal lands.

Estimated Completion Time: 2 hours.

Annual Responses: 4,300.

Annual Burden Hours: 8,600.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202-653-6105.

Dated: February 24, 1992.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 92-9312 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-84-M

[ID-060-02-3130-10; IDI-28747]

Cascade Resource Management Plan, ID; Amendment

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of intent; amendment to

the Cascade Resource Management Plan, Idaho.

SUMMARY: Pursuant to the ELM Planning Regulations (43 CFR 1600) this notice advises the public that the Cascade Resource Area of the Boise District, Bureau of Land Management, is proposing to amend the Cascade Resource Management Plan and consider a land exchange. Five items will be addressed in this amendment. They are:

1. A proposal to exchange the following Public and State of Idaho lands:

State of Idaho Lands

Boise Meridian

T. 49 N., R. 4 W.,

Sec. 16: SW $\frac{1}{4}$ NE $\frac{1}{4}$ south of high water line, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

T. 48 N., R. 5 W.,

Sec. 36: lots 3, 4, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$;

The area described above contains approximately 492.34 acres.

Public Lands

Boise Meridian

T. 18 N., R. 4 E.,

Sec. 8: lot 1;

Sec. 9: S $\frac{1}{2}$;

T. 17 N., R. 2 W.,

Sec. 5: S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 8: lots 2, 3, 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 21: S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 17 N., R. 4 E.,

Sec. 21: E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 22: S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 34: S $\frac{1}{2}$;

T. 16 N., R. 4 W.,

Sec. 17: N $\frac{1}{2}$ NE $\frac{1}{4}$;

T. 16 N., R. 4 E.,

Sec. 12: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 13: NE $\frac{1}{4}$ NE $\frac{1}{4}$;

T. 10 N., R. 3 E.,

Sec. 22: S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 23: S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 26: W $\frac{1}{2}$;

Sec. 27: All;

Sec. 28: E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 33: NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 34: NE $\frac{1}{4}$ NW $\frac{1}{4}$;

T. 9 N., R. 3 E.,

Sec. 3: lots 3, 4, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 11: S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 14: SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 35: lots 1, 2, 3, 4, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$;

T. 9 N., R. 2 E.,

Sec. 11: NW $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 8 N., R. 3 E.,

Sec. 3: S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 14: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

The area described above contains approximately 4,558.81 acres.

The parcels of State land are located adjacent to Coeur d'Alene Lake, and are currently being leased by Kootenai County as public parks using water

access. The scattered parcels of public land are located in Washington, Boise, Valley, and Adams counties. It is anticipated that not all of the above described public lands will be found suitable for exchange purposes.

2. A proposal to identify for possible sale a 0.4 acre tract of land within Lot 8, section 26, T. 6 N., R. 5 E., B.M., Idaho.

3. A proposal to return to BLM ownership and management approximately 854.78 acres of land commonly referred to as the Dautrich Preserve; previously patented under the Recreation and Public Purposes Act.

4. A proposal for management of lands currently encumbered by various withdrawals upon revocation of the withdrawals.

5. A proposal for management of lands acquired by purchase, donation, or exchange.

The main issues anticipated in this plan amendment for each of the above listed items are, respectively: (1) Whether the proposed exchange is in the public interest; (2) whether it is in the public interest to sell the subject tract; (3) whether the subject lands should be managed with other lands in the area; (4) whether lands should be managed with other lands in the area upon revocation of existing withdrawals; and (5) whether lands acquired by purchase, donation or exchange should be managed for the purpose for which they were acquired and in conjunction with adjoining or other public lands in the area.

A land use plan amendment and environmental analysis will be prepared for the subject lands by an interdisciplinary team including range, wildlife, hydrology, soils, recreation, minerals, forestry, and cultural resource specialists.

DATES: Interested parties may submit comments to the District Manager at the address shown below until June 8, 1992.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: John Fend, Cascade Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705, (208) 384-3300 to obtain additional information regarding this plan amendment. The existing land use plan and maps are available for review at the Cascade Resource Area office in Boise, Idaho.

SUPPLEMENTARY INFORMATION: Publication of this notice in the Federal

Register will segregate the public lands described in Item No. 1 from the public land laws, including the mining and mineral leasing laws. The segregative effect of this Notice shall end upon issuance of patent, or two (2) years from the date of the publication, whichever occurs first.

Dated: April 16, 1992.

Barry C. Cushing,

Acting District Manager.

[FR Doc. 92-9305 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal of 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 information collection requirement and related form may be obtained by contacting Jeane Kalas at (303) 231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010-0076), Washington, DC 20503, telephone (202) 395-7340.

Title: Application for Reward for Original Information.

Abstract: The Secretary of the Interior is authorized to pay a reward for information resulting in the recovery of royalty or other payments owed the United States from any oil or gas leases on Federal lands or the Outer Continental Shelf. To claim a reward, individuals must voluntarily, and of their own initiative, submit an Application for Reward for Original Information. The information requested on the application enables the Minerals Management Service to determine the amount of the reward and to pay the reward.

Bureau Form Number: MMS-4280.

Frequency: On occasion.

Description of Respondents: Individuals.

Annual Responses: 10.

Estimated Completion Time: One-half hour.

Annual Burden Hours: 5.

Bureau Clearance Officer: Dorothy Christopher (703) 787-1239.

Dated: March 5, 1992.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 92-9310 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-MR-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 form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0096), Washington, DC 20503, telephone 202-395-7340.

Title: Adoption of State Standards, 30 CFR part 718.

OMB Approval Number: 1029-0096.

Abstract: Information collected in part 718 of the regulations of the Office of Surface Mining Reclamation and Enforcement are used to determine whether State laws or regulations contain more stringent standards than the Federal requirements in 30 CFR parts 715, 716 or 717.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance Officer: Andrew F. DeVito (202) 343-5150.

Dated: April 8, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92-9311 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-237]

Production Sharing; U.S. Imports Under Harmonized Tariff Schedule Subheadings 9802.00.60 and 9802.00.80, 1988-91**AGENCY:** United States International Trade Commission.**ACTION:** Continuation of investigation and opportunity for written statements.

SUMMARY: The Commission's 1992 report on "Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Subheadings 9802.00.60 and 9802.00.80," will cover imports for the period 1988-91 and will be published in December 1992. The Commission annually conducts a study on production sharing.

FOR FURTHER INFORMATION CONTACT: Hazel L. Robinson (202-205-3496), General Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: Harmonized Tariff Schedule (HTS) subheading 9802.00.60 involves tariff treatment for metal of U.S. origin processed in a foreign location and returned to the United States for further processing; heading 9802.00.80 involves tariff treatment for imported goods that contain U.S.-made components.

Notice of institution of the investigation in 1986 was published in the *Federal Register* of September 4, 1986 (51 FR 31729). Notice of the Commission's 1991 report was published in the *Federal Register* of February 21, 1991 (56 FR 7058).

WRITTEN SUBMISSION: No public hearing is planned. However, since monitoring imports under HTS subheadings 9802.00.60 and 9802.00.80 is a continuing endeavor of the Commission, written statements concerning the investigation are welcome at any time. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary,

United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-3810.

Issued: April 15, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-9362 Filed 4-21-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-334]**Decision Not To Review an Initial Determination Amend the Complaint and Notice of Investigation To Add a Firm as a Respondent**

In the Matter of Certain condensers, parts thereof and products containing same, including air conditioners for automobiles.

AGENCY: U.S. International Trade Commission.

ACTIONS: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 5) in the above-captioned investigation granting the motion of complainant Modine Manufacturing Co. to amend the complaint and notice of investigation to add Showa Aluminum Corporation of America of Mount Sterling, Ohio as a respondent.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-3096. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

SUPPLEMENTARY INFORMATION: Notice of institution of this investigation was published in the *Federal Register* on January 23, 1992 (57 FR 2784).

On March 10, 1992, complainant moved (Motion Docket No. 334-5)

pursuant to interim rule 210.22(a) to amend the complaint and notice of investigation to add Showa Aluminum Corporation of America of Mount Sterling, Ohio as a respondent in the investigation. The motion was supported by the Commission investigative attorneys and unopposed by any party. On March 18, 1992, the presiding ALJ issued an ID granting the motion. No petitions for review or agency comments were filed concerning the ID.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53).

Issued: April 16, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-9360 Filed 4-21-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]**Review and Modification**

In the Matter of Certain microcomputer memory, components thereof and products containing the same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review and modify the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 12) granting a joint motion to terminate the investigation as to respondent Sun Electronics Corporation (Sun) on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-3108. Copies of the nonconfidential version of the ID, the consent order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 12, 1991, Chips and

Technologies, Inc. (Chips) filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain microcomputer memory controllers, components thereof, and products containing same that infringe certain U.S. patents owned by Chips.

The Commission instituted an investigation into the allegations of Chips' complaint and published a notice of investigation in the *Federal Register*. 56 FR 52058-59 (October 17, 1991).

On February 25, 1992, complainant and Sun moved jointly pursuant to Commission interim rule 210.51 (19 CFR 210.51) to terminate the investigation as to Sun on the basis of a consent order and consent order agreement (Motion Docket No. 331-12). The Commission investigative attorneys supported the motion. On March 18, 1992, the presiding administrative law judge issued an ID granting the motion (ALJ Order No. 12). Notice of the ID was published in the *Federal Register* on April 1, 1992. 57 FR 11091. No petitions for review of the ID, or agency comments or public comments were filed.

On April 16, 1992, the Commission determined to review and modify the ID by deleting the last paragraph on page 4 and the first full paragraph on page 5.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53, 210.55, and 211.21 (19 CFR 210.53, 210.55, and 211.21, as amended).

Issued: April 16, 1992.

By order of the Commission.
Kenneth R. Mason,
Secretary.

[FR Doc. 92-9361 Filed 4-21-92; 8:45 am]
BILLING CODE 7020-02-M

[Investigation 337-TA-332]

Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement and Settlement Agreement

In the matter of certain translucent ceramic orthodontic brackets.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order

agreement and settlement agreement: Dentaurum, Inc. and Dentaurum J.P. Winkelstroeter, KG, GAC International, Inc. and Tomy Incorporated.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on April 13, 1992.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: April 13, 1992.

By order of the Commission.
Kenneth R. Mason,
Secretary.

[FR Doc. 92-9363 Filed 4-21-92; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32053]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Southern Pacific Transportation Co.

Burlington Northern Railroad Company has filed a notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition from Southern Pacific Transportation Company of overhead trackage rights over a 38.45-mile rail line between milepost 12.85, at Waxahachie, TX, and milepost 51.3, at Fort Worth, TX. The trackage rights were to become effective on April 14, 1992.

Any comments must be filed with the Commission and served on: Michael E. Roper, Associate General Counsel, Burlington Northern Railroad, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen and revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the effectiveness of the exemption.

Decided: April 15, 1992.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-9204 Filed 4-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 419X)]

The Baltimore and Ohio Chicago Terminal Railroad Co.—Abandonment Exemption—In Cook County, IL

The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT),¹ has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a 1.46-mile rail line between milepost DCB-2.24 and milepost DCB-3.70, in Cook County, IL.

B&OCT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) There is no overhead

¹ B&OCT is a wholly owned subsidiary of CSX Transportation, Inc., which is a unit of CSX Corporation.

traffic on the line; and (3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period. B&OCT further certified that the notice requirements at 49 CFR 1105.12 and 49 CFR 1152.50(d)(1) have been met.

As a condition to this exemption, an employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on May 22, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29⁴ must be filed by May 4, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 12, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to B&OCT's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc. 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&OCT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by April 27, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington,

DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-9366 Filed 4-21-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Hercules Inc.

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d) of CERCLA, 42 U.S.C. 9622(d), notice is hereby given that on April 6, 1992 a consent decree in *United States v. Hercules Incorporated*, Civil Action No. 92-1027 was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint filed by the United States, on behalf of the Environmental Protection Agency ("EPA"), at the time of lodging of the consent decree, alleges that the defendant Hercules Incorporated is liable under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for an injunction and response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Resin Disposal Superfund Site, in Allegheny County, Pennsylvania (the "Site"). The complaint further states that defendant Hercules Incorporated is a present owner of the Site.

The consent decree resolves the claims alleged in the complaint and requires Hercules Incorporated to implement the "operable unit one" remedy selected in EPA's Record of Decision ("ROD") dated June 28, 1991, which provides for installation of a multi-layer cap and infiltration control system for the landfill to reduce leachate generation and to prevent further migration of contaminants; upgrading the lower landfill dike to increase its stability; installation of a skimmer well system to collect floating product in ground water which may otherwise migrate offsite through the

Pittsburgh Coal formation; relocation of the sanitary sewer to allow future access to it without disturbing the landfill cap system; upgrading the oil/water separator; construction of a fence around the perimeter of the site; deed restrictions; and a 30-year monitoring program. The decree also requires reimbursement of EPA for past response costs of \$203,551.11.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Hercules, Incorporated*, DOJ Ref. No. 90-11-2-716. The proposed consent decree may be examined at the office of the United States Attorney, 1400 Gulf Tower, 707 Grant Street, Pittsburgh, Pennsylvania 15219. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 (202-347-7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of \$22.25 (consent decree only) or \$35.75 (consent decree with attachments) (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Roger Clegg,

Acting Assistant Attorney General,
Environment and Natural Resources Division.

[FR Doc. 92-9277 Filed 4-21-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Interest Group ("the Group") on December 18, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of

² A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

³ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 104 (1987).

⁴ The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

antitrust plaintiffs to actual damage under specified circumstances.

On April 19, 1991, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the *Federal Register* pursuant to section 6(b) of the Act on May 23, 1991 (56 FR 23723). The Group filed an additional notification on September 19, 1991. The Department published a notice in response to the additional notification on November 5, 1991 (56 FR 56528).

The identities of the additional parties to the Group are:

Digital Equipment Corporation, 550 King Street, M/S LK62-2N11, Littleton, MA 01460-1289.

NEC America, 1525 Walnut Hill Lane, Irving, TX 75038.

Telecom Australia, 10/624 Bourke Street, Melbourne, 3000 Australia.

Vitalink, 6607 Kaiser Drive, Fremont, CA 94555.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-9278 Filed 4-21-92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-23]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee (CPAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Commercial Programs Advisory Committee.

DATES: May 12, 1992, 1:30 p.m. to 5 p.m.; and May 13, 1992, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Hotel Intercontinental, Orleans 1 Room, 444 St. Charles Avenue, New Orleans, LA 70130-3171.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 703/271-5500.

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee provides counsel on the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. James K. Baker and is currently composed of 16 members.

The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the Committee members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

May 12, 1992

1:30 p.m.—Tour of John C. Stennis Space Center.

5 p.m.—Adjourn.

May 13, 1992

8:30 a.m.—Welcome/Introduction of Members.

9 a.m.—Communications and Remote Sensing Division Overview.

9:45 a.m.—Space Remote Sensing Center Overview.

10:30 a.m.—Member Discussion.

2:30 p.m.—Adjourn.

Dated: April 16, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92-8364 Filed 4-21-92; 8:45 am]

BILLING CODE 7510-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance Submitted to OMB

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the request for an extension of an existing clearance for information collections. RI 25-46, Student Enrollment Status Questionnaire, is used to obtain enough information about adult students to try to predict what type student is likely to discontinue full-time schooling and be overpaid by OPM. RI 25-14, Self-Certification of Full-Time School Attendance, collects information about marital status and school enrollment for student survivor annuitants.

The number of respondents for RI 25-46 is 14,000 and we estimate it takes 15 minutes to complete the form. The annual burden is 3,500 hours. The number of respondents for RI 25-14 is 14,000 and we estimate it takes 10 minutes to fill out the form. The annual burden is 2,800 hours. The total annual burden is 6,300 hours.

For copies of this proposal, call C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication..

ADDRESSES: Send or deliver comments to—

Ms. Ellie Goodwin, Chief, Annuitant Services Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW, room 3321, Washington, DC 20415.

and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—

CONTACT: Mary Beth Smith-Toomey, Chief, Administrative, Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

[FR Doc. 92-9349 Filed 4-21-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-18658; 811-4022]

Dean Witter Tax-Advantaged Corporate Trust; Application

April 16, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dean Witter Tax-Advantaged Corporate Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on February 28, 1992, and supplemented with a letter from applicant's counsel dated April 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 11, 1992 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a

certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272-3035, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Massachusetts business trust. On May 16, 1984, applicant registered under the Act and registered an indefinite number of its shares under the Securities Act of 1933. The registration statement was declared effective on July 31, 1984, and applicant began the initial public offering of its shares on August 17, 1984.

2. On October 24, 1991, applicant's Board of Trustees approved unanimously a Plan of Liquidation and Dissolution (the "Plan") that provided for the liquidation of applicant and the distribution of applicant's assets to its securityholders. A proxy statement regarding the Plan was filed with the Commission on October 25, 1991, and mailed to applicant's shareholders on or about November 5, 1991. At a special meeting of shareholders held on December 30, 1991, the holders of a majority of applicant's shares voted in favor of the Plan.

3. As of February 7, 1992, the nearest date practicable preceding liquidation, applicant had 1,334,400 outstanding shares, with an aggregate net asset value of \$10,835,328 and a per share net asset value of \$8.12. On February 10, 1992, applicant distributed its remaining net assets to its securityholders in accordance with their *pro rata* interests.

4. The expenses of liquidating applicant totalled \$28,330, and consisted of proxy preparation fees, legal fees, and accounting fees. Applicant paid all of such expenses.

5. Applicant intends to file Articles of Dissolution with the Secretary of State of the Commonwealth of Massachusetts

to terminate its status as a Massachusetts business trust.

6. Applicant has no assets, debts, liabilities, or securityholders. There are no securityholders of applicant to whom distributions in complete liquidation of their interests have not been made.

7. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are its securityholders.

8. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to windup its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-9380 Filed 4-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18659; File No. 812-7878]

National Home Life Assurance Company, et al.

April 16, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: National Home Life Assurance Company ("National Home"), National Home Life Assurance Company Separate Account V (the "Separate Account") and Capital Holding Securities Corporation.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain flexible premium variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on February 19, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 11, 1992, and should be accompanied by proof of service on Applicants in the

form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o National Home Life Assurance Company, 20 Moores Road, Frazer, PA 19355.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Attorney, at (202) 272-3045, or Michael V. Wible, Special Counsel, at (202) 272-2080, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. National Home, a stock life insurance company organized under the laws of Missouri, is wholly-owned by Capital Holding Corporation, a publicly held insurance holding company. National Home is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in 49 states, the District of Columbia and Puerto Rico.

2. The Separate Account was established by National Home as a separate account under Missouri law to fund the Contracts. The Separate Account is registered as a unit investment trust under the 1940 Act. The Separate Account has six subaccounts, each of which invests solely in a corresponding portfolio of Acacia Capital Corporation, doing business as Calvert Capital Corporation (the "Fund").

3. The Fund, a Maryland corporation, is registered under the 1940 Act as a diversified, open-end management investment company. Calvert Group, Ltd., a subsidiary of Acacia Mutual Life Insurance Company of Washington, DC, is the sponsor of the Fund. The Fund consists of several portfolios (the "Portfolios"). Shares of each Portfolio are purchased by National Home for the corresponding subaccount of the Separate Account at net asset value. Shares of each Portfolio are also offered to other affiliated or unaffiliated separate accounts of insurance companies offering variable annuity contracts or variable life insurance policies.

4. The Contract is a flexible premium payment contract that is intended to be used either in connection with a retirement plan qualified under section 401(a), 403(b), 408, and 457 of the Internal Revenue Code ("Qualified Contract") or by other purchasers ("Non-qualified Contract"). A Contract owner may allocate purchase payments and/or the accumulation value to the general account of National Home and/or the subaccounts of the Separate Account. The Contract owner may select among annuity payment options that include variable or fixed annuity options. Capital Holding Securities Corporation, a wholly-owned subsidiary of Capital Holding Corporation, is the principal underwriter of the Contracts.

5. The minimum initial purchase payment for a Non-Qualified Contract is \$5,000. A Qualified Contract may be purchased with a minimum initial purchase payment of \$2,000 or with \$50 monthly investments pursuant to a systematic payment plan.¹

6. The Contract is available in two forms, A Unit Contracts and B Unit Contracts. A Unit Contracts have a maximum front-end sales load of 5.75% deducted from each purchase payment. There are no withdrawal or surrender charges for A Unit Contracts. B Unit Contracts have no front-end sales load deducted from purchase payments. Up to 10% of the Contract's accumulated value as of the last Contract anniversary (10% of the initial purchase payment during the first Contract year) can be withdrawn once per year without charge. However, additional withdrawals in the first Contract year are subject to a contingent deferred sales load of 6%. The applicable contingent deferred sales load decreases by 1% per year until after the sixth Contract year there is no contingent deferred sales load. The total contingent deferred sales loads assessed will not exceed 8.5% of the purchase payments under the Contract. Applicants are relying on Rule 6c-8 under the 1940 Act to deduct the contingent deferred sales load.

7. Contract owners may make unlimited exchanges among the Portfolios. No fee is imposed for a Contract owner's first twelve exchanges per Contract year; after that there is a \$15 charge per exchange.

8. The Contracts are subject to an annual policy fee of \$30 which will be deducted on each Contract anniversary and upon surrender, on a pro rata basis, from each subaccount.

9. An administrative charge equal to .15% annually of the net asset value of the Separate Account is assessed daily. The administrative fee is intended to cover National Home's ongoing administrative expenses, and will not exceed the cost of services to be provided over the life of the Contract in accordance with the applicable standards in Rule 26a-1 under the 1940 Act.

10. National Home makes a deduction from the accumulated value or purchase payments for premium taxes, imposed by state law, as the taxes are incurred. Currently these taxes range up to 3%.

11. National Home imposes a charge as compensation for bearing certain mortality and expense risks under the Contract. The annual charge is assessed daily based on the net asset value of the Separate Account. The annual mortality and expense risk charge is .65% of the net asset value of the Separate Account attributable to A Unit Contracts, and 1.25% of the net asset value of the Separate Account attributable to B Unit Contracts. For A Unit Contracts, .45% is allocated to the mortality risk and .20% is allocated to the expense risk; for B Unit Contracts, .80% is allocated to the mortality risk and .45% is allocated to the expense risk.

12. Where a life annuity payment option is selected, the mortality risk borne by National Home under the two forms of the Contract arises from the obligation of National Home to make annuity payments regardless of how long an annuitant may live. The mortality risk is the risk that annuitants will live longer than National Home's actuarial projections indicate, resulting in higher than expected annuity payments. National Home also assumes mortality risk as a result of an adjusted death benefit which is to be paid to an annuitant's beneficiary if the adjusted death benefit is greater than the Contract's accumulated value.

13. The expense risk borne by National Home is the risk that the charges for administrative expenses which are guaranteed for the life of the Contract may be insufficient to cover the actual costs of issuing and administering the Contract.

14. The mortality and expense risk is higher under the B Unit Contracts than under the A Unit Contracts because B Unit Contracts are expected to be more attractive to Contract owners purchasing a Qualified Contract. While both A Unit Contracts and B Unit Contracts are offered as Qualified Contracts, historically, the Contracts offering a contingent deferred sales load (like the B Unit Contracts) have been

more appealing to those seeking to purchase Qualified Contracts than contracts with a front-end sales load (like the A Unit Contracts).² The more complicated regulatory structure surrounding the offering and maintenance of Qualified Contracts makes these Contracts more expensive to administer. In addition, it is anticipated that the utilization of B Unit Contracts for Qualified Contracts will increase the instances where life annuity payment options are selected by B Unit Contract owners, in comparison to A Unit Contract owners, thereby increasing the mortality risk National Home is bearing under B Unit Contracts.

15. If the charges deducted are insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on National Home. If the charges prove more than sufficient, the excess will be added to National Home's surplus and will be used for any lawful purpose including any shortfalls in the costs of distributing the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charges under the Contracts.

2. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts comparable to the A Unit Contracts and the B Unit Contracts currently being offered in the insurance industry taking into consideration such factors as current charge level, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

3. Applicants represent that the Separate Account will invest only in underlying funds that have undertaken to have a board of directors/trustees, a majority of whom are not interested

¹ Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

² Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

persons of any such fund, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

4. Applicants do not believe that the front-end sales load or contingent deferred sales load imposed under the Contracts will necessarily cover the expected costs of distributing the Contract. Any shortfall will be made up from National Home's general account assets which will include amounts derived from the mortality and expense risk charges. National Home has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Separate Account and the Contract owners. National Home will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contract meets the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-9379 Filed 4-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18657; 812-7858]

Xerox Financial Services Life Insurance Company, et al.

April 15, 1992.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Xerox Financial Services Life Insurance Company ("Company"), Xerox Variable Annuity Account Four (the "Separate Account"), and Xerox Life Sales Company.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Account under certain individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 28, 1992 and amended on March 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 11, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Dean H. Gossen, Esq., Xerox Financial Services Life Insurance Company, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Company is a stock life insurance company which was originally incorporated in 1981 as Assurance Life Company, a Missouri corporation. Currently, North River Insurance Company, an indirect subsidiary of Xerox Corporation, owns 64.80% of the Company's stock and Van Kampen Merritt, Inc. holds the remaining 35.20%.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently is divided into a sub-accounts which will invest in shares of the portfolios of Van Kampen Merritt Series Trust or Neuberger & Berman Advisers Management Trust.

3. The Contracts will be distributed through Xerox Life Sales Company, an affiliate of the Company.

4. The Contracts are individual flexible purchase payment deferred variable annuity contracts which are available in connection with fringe benefit plans which may or may not qualify for Federal tax advantages. The minimum size for a plan is \$50,000 of aggregate purchase payments anticipated over the first five contract years. If a plan participant chooses to make purchase payments through payroll deduction, payments must be at least \$1,200 per year. Additional purchase payments must be at least \$2,000.

5. Contract owners may transfer all or part of their interest in a sub-account to another sub-account of the Separate Account. The Company will deduct a transfer fee from the amount which is transferred which will be equal to the lesser of \$25 or 2% of the amount transferred if there have been more than 12 transfers in the contract year. After annuity payments begin, the Contract owners may make one transfer per contract year.

6. The Company will deduct, at a maximum, an annual contract maintenance charge of \$30 from the contract value on each Contract anniversary, at the time a contract is surrendered and, after the annuity date, on a monthly basis. The Company has retained the right to reduce this charge. Applicants represent that the charge has not been set at a level greater than its cost and contains no element of profit. In addition, the Company deducts on each valuation date an administrative expense charge which is equal at a maximum, on an annual basis, to .15% of the daily net asset value of the Separate Account. This charge is designed to cover the shortfall in revenues from the contract maintenance charge. The Company does not intend to profit from this administration expense charge. Applicants are relying upon rule 26a-1 with respect to the deduction of this charge.

7. The Contracts do not provide for a front-end sales charge. Instead, a withdrawal charge (sales load) is imposed on withdrawals of contract values attributable to purchase payments that have not been held for longer than five contract years. The withdrawal charge is equal to 5% of the purchase payment withdrawn. Subject to certain conditions noted in the application, up to 10% of purchase payments may be withdrawn free of the withdrawal charge on a noncumulative basis once each contract year.

8. The Company assumes mortality and expense risks under the Contracts. The mortality risks arise from the contractual obligations to make annuity payments after the annuity date for the life of the annuitant and to waive the withdrawal charge in the event of the death of the annuitant or contract owner (as applicable). The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including contract maintenance costs, administrative fees, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the contract maintenance charge and the administrative expense charge. To compensate it for assuming these risks, the Company deducts on each valuation date a mortality and expense risk charge which is equal at a maximum, on an annual basis, to 1.25% of the daily net asset value of the Separate Account (.80% for mortality risks and .45% for expense risks). The Company has retained the right to reduce the mortality and expense risk charge.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charge under the contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the 1.25% guaranteed maximum for this charge is within the range of industry practice for comparable variable annuity contracts. Applicants state that these representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed

annuity purchase rates, the expense risks taking into account the existence of charges against Separate Account assets for other than mortality and expense risks, the estimated costs, now and in the future, for certain product features, and industry practice with respect to comparable variable annuity contracts. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of this analysis.

3. Applicants state that if the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The mortality and expense risk charge is guaranteed by the Company and cannot be increased.

4. Applicants acknowledge that the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

5. Applicants represent that the Separate Account will invest only in underlying mutual funds that undertake, in the event they should adopt any plan under rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors or a board of trustees, a majority of the members of which are not "interested persons" of such funds within the meaning of section 2(a)(19) of the 1940 Act.¹

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the

¹ Applicants represent that, during this Notice Period, the application will be amended to reflect this representation.

requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-9378 Filed 4-21-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Deputy Secretary

[Public Notice 1587]

Notice Convening an Accountability Review Board for the Attack on the Ambassador's Residence in Lima

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 *et seq.*), I have determined that the February 11, 1992 bomb explosion at the ambassador's residence in Lima, Peru involved loss of life and significant property damage related to a U.S. mission abroad. Therefore, I am convening an accountability review board, as required by that statute, to examine the facts and circumstances of the explosion and report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

I have appointed Mr. Langhorne A. Motley as chairperson of the board. He will be assisted by Mr. Peter Sebastian, Mr. Raymond Humphrey, Mr. Warren Frank, and by Mr. Jay P. Moffat, who will also act as Executive Secretary. The members will bring to their deliberations distinguished backgrounds in government service and private life.

I have asked the board to submit its conclusions and recommendations to the Secretary within sixty days of its first meeting, unless the Chairman determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the board.

Anyone with information relevant to the board's examination of this incident should contact the board promptly on (202) 647-6245.

Dated: April 15, 1992.

Lawrence S. Eagleburger,
Deputy Secretary of State.

[FR Doc. 92-9292 Filed 4-21-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-028]

Merchant Marine Personnel Advisory Committee (MERPAC)

AGENCY: Coast Guard, DOT.

ACTION: Deadline for submission of application.

SUMMARY: The U.S. Coast Guard announced in the *Federal Register* dated December 31, 1991 (p. 67644) that it was seeking applications for membership on MERPAC. No deadline was given for submission of applications. Accordingly, the Coast Guard is now setting a deadline for receipt of applications for MERPAC membership so that the selection of members can commence.

DATES: Applications must be received by close of business on, or be postmarked no later than, May 7, 1992.

ADDRESS: Persons interested in applying should write to Commandant (G-MVP), room 1210, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, phone (202) 267-0221.

FOR FURTHER INFORMATION CONTACT: LCDR S.J. Glover, Executive Director, Merchant Marine Personnel Advisory Committee, room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, phone (202) 267-0221.

Dated: April 14, 1992.

R.C. North,

Captain, U.S. Coast Guard, Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-9276 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-14-M

[GGD-92-030]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, May 18 and 19, 1992 at the Red Lion Lloyd Center Hotel, 1000 NE. Multnomah, Portland, Oregon, beginning at 8:45 a.m. and ending at 4 p.m. The

agenda for the meeting will be as follows:

1. Review of action taken at the 84th meeting of the Council.
2. Executive Director's Report.
3. Report of the Consumer Affairs and Standards Review Subcommittee.
4. Presentation on Personal Flotation Devices (PFDs).
5. Discussion on International Standards Implications.
6. Report on International Standards Organization Meeting.
7. Update on Recreational Boating Standards and Product Assurance.
8. Report of the Multiple-Use Waterways Subcommittee.
9. Propeller-Driven Personal Watercraft Subcommittee Report.
10. Review of Recreational Boating Safety Regulations, and Reports from the Three Review Subcommittees.
11. Briefing on the Boating Safety Hotline.
12. Presentation on Multiple-Use Waterways Conflicts in the Northwest.
13. Remarks by Chief, Office of Navigation Safety and Waterway Services.
14. Chairman's Session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Dated: April 14, 1992.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-9275 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of

the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on May 14, 1992, at 9 a.m. Arrange for oral presentations by May 1, 1992.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20006-5206.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on May 14, 1992, in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20591. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- Future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by May 1, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC on April 16, 1992.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-9352 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-13-M

Proposed Alteration of Terminal Control Area at Charlotte, NC; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meetings.

SUMMARY: This notice announces fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposed modification to the Charlotte, NC, Terminal Control Area (TCA). The alteration of the TCA is being

considered due to the increased volume of traffic arriving and departing Charlotte.

DATES: Comments must be received on or before August 18, 1992. These informal airspace meetings will be held on June 17 and 18, 1992.

ADDRESSES: The location of the informal airspace meetings is as follows:

Date: Wednesday, June 17 and Thursday, June 18, 1992.

Time: 7 to 10 p.m.

Location: North Carolina Air National Guard, 145th Tactical Air Group, Dining Facility, 5225 Morris Field Drive, Charlotte, NC 28208.

Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Ron Holmes, System Management Branch (ASO-530), Air Traffic Division, Federal Aviation Administration, Southern Region Headquarters, P.O. Box 20636, Atlanta, GA 30320; telephone: (404) 763-7537.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the FAA's Southern Region. Each participant will be given an opportunity to make a presentation.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position paper or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments

Issued in Washington, DC on April 15, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-9353 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Intelligent Vehicle Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold meetings of its Coordinating Council and Executive Committee on May 17 and May 20, respectively. IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA as an advisory committee establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of IVHS AMERICA will meet on May 17, 1992, from 8:30 a.m. to noon, P.T. The session is expected to focus on: (1) An update on the status of the Strategic Plan for Intelligent Vehicle Highway Systems in the United States, (2) Discussion on Creation of Energy and Environment, and Rural Transportation Committees, (3) Report of International Liaison Committee, and (4) Other technical activities of IVHS AMERICA.

The Executive Committee will meet on May 20, 1992, from 1:30 p.m. to 4 p.m., P.T. The session is expected to focus on: (1) Adoption of Strategic Plan and Authorization for Transmittal to the Department of Transportation, (2) Review of Changes to Articles of Incorporation and Adoption of Related Bylaws, and (3) Discussion of need for Rural Transportation Committee, need for Energy/Environmental Technical Committee, and transfer of International Liaison Committee from a subcommittee of the Coordinating Council to a committee of the Executive Committee.

ADDRESSES: Newport Beach Marriott Hotel, 900 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT:

Mr. Lyle Saxton, FHWA, HTV-10, room 3123, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2197, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Costantino, IVHS AMERICA, 1776 Massachusetts Avenue, NW., fifth floor, Washington, DC 20036, (202) 857-1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 14, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-9299 Filed 4-21-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Commonwealth Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Commonwealth Federal Savings Bank, Manassas, Virginia, on April 3, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9346 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Federal Savings Association of Virginia; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Federal Savings Association of Virginia, Falls Church, Virginia, on April 10, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9344 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Atlantic Financial Savings Bank, F.S.B.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Atlantic Financial Savings Bank, F.S.B., San Francisco, California ("Association"), OTS No. 8117 with the Resolution Trust Corporation as sole Receiver for the Association, on April 10, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9334 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Connecticut Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Connecticut Federal Savings and Loan Association, Hartford, Connecticut ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on February 7, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9337 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

The Federal Savings Bank, FSB Atlanta, Georgia; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for The Federal Savings Bank, FSB, Atlanta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9328 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Chisholm Federal Savings Association, Kingfisher, OK; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Chisholm Federal Savings Association, Kingfisher, Oklahoma ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9348 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

County Bank, F.S.B.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for County Bank, F.S.B., Santa Barbara, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9323 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Federal Savings Bank of Virginia; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Federal Savings Bank of Virginia, Falls Church, Virginia, OTS Number 8557, on April 10, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9331 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Commonwealth Savings Bank of Virginia, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Commonwealth Savings Bank of Virginia, FSB, Manassas, Virginia, OTS No. 6995, on April 3, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9345 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Danbury Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Danbury Federal Savings and Loan Association, Danbury, Connecticut ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9336 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Flagler Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Flagler Federal Savings and Loan Association, Miami, Florida, OTS No. 5976, on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9324 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of Raleigh, Raleigh, North Carolina; Replacement of Conservator With a Receiver

Notice is hereby given that pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association of Raleigh, Raleigh, North Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 6, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9329 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Seminole County, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings and Loan Association of Seminole County, F.A., Sanford, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 3, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9341 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

First State Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First State Savings Association, Sedalia, Missouri, OTS No. 3702, on April 3, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9347 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Irving Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Irving Federal Savings and Loan Association, Paterson, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on February 21, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9338 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Metrobank Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Metrobank Federal Savings and Loan Association, Palisades Park, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 10, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9339 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Metropolitan Federal Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Metropolitan Federal Savings and Loan Association, F.A. with the Resolution Trust Corporation as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9340 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

New MeraBank Texas, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for New MeraBank Texas, FSB, El Paso, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 3, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9342 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Progressive Savings Bank, FSB, Pasadena, California; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Progressive Savings Bank, FSB, Pasadena, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92-9335 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Red River Federal Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Red River Federal Savings and Loan Association, F.A., Lawton, Oklahoma ("Association"), with the Resolution Trust Corporation

as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9327 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Security First Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Security First Federal Savings and Loan Association, Daytona Beach, Florida, OTS No. 3121, on April 10, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9333 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Sentry Federal Savings Association, Norfolk, Virginia; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sentry Federal Savings Association, Norfolk, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9330 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

State Savings, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for State Savings, FSB, Jackson Heights, New York ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9326 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

United Federal Savings Bank, Smyrna, GA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for United Federal Savings Bank, Smyrna, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9343 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Valley Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Valley Federal Savings and Loan Association, Van Nuys, California, Docket No. 7443, on April 10, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9332 Filed 3-21-92; 8:45 am]

BILLING CODE 6720-01-M

Westerleigh Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Westerleigh Federal Savings and Loan Association, Staten Island, New York ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 27, 1992.

Dated: April 17, 1992.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-9325 Filed 4-21-92; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 78

Wednesday, April 22, 1992

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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 23, 1992.

PLACE: Room, 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Southern Ohio Coal Co.*, Docket No. WEVA 90-141. (Issues include whether the judge erred in concluding that Southern Ohio Coal Co. violated 30 CFR § 75.1725(c).)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 522b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Co.*, Docket No. WEVA 90-141. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: April 16, 1992.

[FR Doc. 92-9483 Filed 4-20-92; 10:12 am]

BILLING CODE 6735-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 7, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in —

Simpson, Gumpertz and Heger, Inc.

OSHRD Docket No. 89-1300

CONTACT PERSON FOR MORE

INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015

Dated: April 16, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92-9484 Filed 4-20-92; 10:13 am]

BILLING CODE 7600-01-M

U.S. RAILROAD RETIREMENT BOARD Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on April 28, 1992, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844

North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

- (1) Office of Quality and Compliance Proposal.
- (2) Correspondence with OPM Director.
- (3) District Office Hours of Operation.
- (4) Backlog Reductions (Task Force Report/Administrative Finality).
- (5) Update from IRS Working Group.
- (6) All Regulations pending before the Board.
- (7) All claimant/beneficiary appeals pending before the Board.
- (8) Final Rule—Part 255, Recovery of Overpayments.
- (9) All Coverage Determinations pending before the Board.
- (10) (Incavo) Change in Policy.
- (11) Relocation Expenses.
- (12) Medical Fee Schedule.
- (13) Medical Consultant's Contracts (internal and external).
- (14) Performance Appraisal Plans.
- (15) Notification of Waivers Over \$500 by Bureaus of RSP and H&A.
- (16) Pay reform policies.
- (17) Medicare Part B Contract.
- (18) Publications submitted to the Board for approval.
- (19) Agency Appraisal and Compensation Plan for SES Members.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: April 17, 1992.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-9541 Filed 4-20-92; 3:25 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register

Vol. 57, No. 78

Wednesday, April 22, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0126]

Drug Export; Anti-Human Globulin Reagent (Rabbit and Murine Monoclonal)(Green) anti-IGG,—C3D; Polyspecific, Ortho Biovue™ System

Correction

In notice document 92-5983 appearing on page 8879 in the issue of Friday, March 13, 1992, make the following correction:

In the first column, in the **SUMMARY**, in the sixth line, after "Globulin" insert "Reagent".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-28-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-45/50 Series Engines

Correction

In proposed rule document 92-7099 beginning on page 10617 in the issue of Friday, March 27, 1992, make the following correction:

§ 39.13 [Corrected]

On page 10618, in the first column, in § 39.13(a), in the third line, "60" should read "600".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-43-AD; Amendment 39-8195; AD 92-06-15]

Airworthiness Directives; McDonnell Douglas Model DC-3 Series Airplanes, Including Those Modified for Turbo-Propeller Power

Correction

In rule document 92-6741 beginning on page 10131 in the issue of Tuesday, March 24, 1992, make the following correction:

§ 39.13 [Corrected]

On page 10132, in the second column, in § 39.13(a)(1)(i), in the fifth line, "SR0357802" should read "SR03578002".

BILLING CODE 1505-01-D

Federal Register

Wednesday
April 22, 1992

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 70, et al.

**Use of Volunteers on Projects Subject to
Davis-Bacon and HUD-Determined Wage
Rates; Interim Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 70, 221, 231, 232, 242, 570, 880, 881, 882, 883, 884, 885, 886, 889, 890, 905, 941, 961, and 968

[Docket No. R-92-1583; FR-2995-I-01]

RIN-2501-AB33

Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements statutory provisions, enacted as part of the National Affordable Housing Act (NAHA), that exempt volunteers from the requirement that workers be paid Davis-Bacon or HUD-determined prevailing wages under certain specified HUD programs. The provisions in the rule will also apply to additional HUD programs that have statutory provisions that permit HUD waiver of Davis-Bacon requirements where volunteers are employed.

DATES: Effective date: May 22, 1992.

Comment due date: June 22, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Richard S. Allan, Office of Labor Relations, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0370, TDD (202) 708-4340. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart

below. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, room 3001, Office of Management and Budget, Washington, DC 20503, Attention: Jennifer Main, Desk Officer for HUD. The Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

ANNUAL REPORTING AND RECORDKEEPING BURDEN

Description	Respondents	Estimated annual hours	Total annual hours
PIH.....	300	.5	150
CDBG.....	1000	.5	500
Housing.....	100	.5	50
Total.....	1400		700

II. Background

Section 955 of the National Affordable Housing Act (NAHA) (Pub. L. 101-625, November 28, 1990) provides an exemption from Davis-Bacon and HUD-determined prevailing wage requirements for volunteers under various programs of the Department of Housing and Urban Development (HUD). Specifically, section 955 provides exemptions from the Davis-Bacon prevailing wage rate requirements in section 110 of the Housing and Community Development Act of 1974 (Community Development Block Grant Program, section 108 loan guarantees and Urban Development Action Grant Program); the Davis-Bacon and HUD-determined prevailing wage rate requirements in section 12 of the United States Housing Act of 1937 (public housing and section 8 assistance); and the Davis-Bacon requirements in section 202(c)(3) of the Housing Act of 1959, as in effect prior to its amendment by section 801 of NAHA (elderly and handicapped housing). In addition, NAHA includes similar exemptions for volunteers in the HOME program (in section 286 of NAHA) and the section 202 program for supportive housing for the elderly (as revised in section 801 of NAHA).

Provisions allowing the Secretary of HUD to waive Davis-Bacon requirements where labor is "donated" by volunteers not otherwise employed at any time during construction had

previously been enacted in section 212(a) of the National Housing Act covering housing insured under section 221 (d)(3) and (d)(4), 221(h)(1), 235(j)(1), 231, 232, 236 and 242 of that Act. In addition, section 402 of the Housing Act of 1950, which applies to the college housing program as well as to rehabilitation under section 312 of the Housing Act of 1964 contains a similar waiver provision. Finally, section 811 of NAHA contains a similar waiver provision for the program for supportive housing for persons with disabilities. The Department believes it desirable, as much as possible, to administer these waiver provisions in the same way it will be administering the new section 955 provisions. The major way in which the waiver provisions differ from the newer exemption provisions is that the waiver provisions require a HUD waiver in each case and also require a HUD finding that the amounts saved through the use of the donated labor are fully credited to the entity undertaking the construction. These requirements are reflected in those portions of the rule concerning waivers.

Prior to the enactment of section 955, it was not generally possible to utilize volunteers on typical projects funded under the Community Development Block Grant (CDBG) program where construction covered by Davis-Bacon prevailing wage provisions was involved because there were no specific provisions that allowed for use of volunteers, even though there was no express prohibition. In the absence of such a provision, Davis-Bacon regulatory and legal interpretations had the practical effect of precluding volunteers because all those employed on the worksite (other than those employed by State or local governments) were required to receive prevailing wage rates irrespective of whether or not some workers were bona fide volunteers. Community-based groups, service organizations, and even building trades unions were effectively precluded from contributing free labor to CDBG-assisted construction. Section 955 was enacted to allow for use of such bona fide volunteers by specifying an exemption. Further, the language in section 955 was based on language found in the Fair Labor Standards Act (FLSA) Amendments of 1985 (Pub. L. 99-150) and related regulations at 29 CFR part 553, which describes how volunteers may be defined. The definitions for volunteers in this rulemaking are based on the FLSA approach.

In order to ensure that the use of volunteer labor on HUD-assisted and

insured construction involves bona fide volunteer labor, this rule establishes a simple procedure for providing a determination that an exemption from Davis-Bacon prevailing wage rates is bona fide in those instances where a payment or payments are made for expenses, reasonable benefits, or nominal fees to volunteers. This determination will be made by the Department of Housing and Urban Development upon request by any agency or private party which is involved in the proposed use of such volunteers. Where no payments to volunteers are involved, no HUD determination will be required, and a simple record-keeping and reporting procedure will be used.

These determinations are required along with record-keeping and reporting under this rule as a means of administratively assuring that the volunteers used in Davis-Bacon work are bona fide and to distinguish them from paid workers, and not to proscribe their use in any way. Many agencies and nonprofit organizations already maintain the information that will be required for record-keeping in order to meet requirements for matching grants. This information is required to enable HUD (and the Department of Labor) to carry out Davis-Bacon and HUD wage rate enforcement responsibilities by being able to distinguish between properly exempt volunteers and employees who are required to be paid prevailing wages.

This interim rule establishes a new part 70 in title 24 of the CFR. The new part sets out requirements with respect to both exemptions and waivers of prevailing wage requirements for volunteers. The new part is applicable to all HUD programs that have a statutory exemption or waiver provision for volunteers, with the exception of the provision in section 20 of the United States Housing Act of 1937 for waiver of labor standards to permit public housing residents in paid employment on the project to volunteer a portion of their labor. Section 20 will continue to be implemented by 24 CFR 964.41. Section 20 applies to volunteering residents that are otherwise employed on the project and it does not fit neatly into a rule concerning volunteers that are not otherwise employed on the work in question. The interim rule also does not cover the contribution of labor by a family on a Mutual Help Homeownership Opportunity program for Indian families under section 202 of the United States Housing Act of 1937, since such labor is credited as a

contribution to the project and is not considered "volunteer" work.

The interim rule makes conforming amendments to other parts of the CFR containing labor standards provisions in order to reference the new part 70.

III. Justification for Interim Rulemaking

Section 955(d) of NAHA provides that the exemptions contained in section 955 apply to any volunteer services provided before, on or after the date of the enactment of NAHA, except that section 955 may not be construed to require the repayment of any wages paid before the date of the enactment of NAHA for services provided before the date of enactment. Thus section 955 is already in effect by its own terms, and the Department has been receiving numerous requests for guidance on these exemptions. For this reason, the Department finds that there is good cause to publish this rule for immediate effect. However, the Department is requesting public comments on this interim rule and will take these comments into consideration in preparing the final rule. The Department intends to publish a final rule by no later than December 31, 1992.

IV. Findings and Certifications

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

Impact on Small Entities. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial

number of small entities. The rule permits, subject to certain requirements, the use of volunteers rather than employees who otherwise would be required to be paid prevailing wage rates, and for whom documentation of payment of wages would otherwise have to be submitted on a weekly basis.

Regulatory Agenda. This rule was listed in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (57 FR 53380, 53393) pursuant to Executive Order 12291 and the Regulatory Flexibility Act as sequence number 1334.

Federalism Impact. The General Counsel, as the designated official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not significantly change existing roles and relationships between Federal, State and local governments in any of the programs it applies to.

The Family. The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. By authorizing and encouraging the use of volunteer labor the rule will help reduce construction and other program costs. Indirectly, at least, this will prove beneficial to the low and moderate income families these programs are designed to serve.

List of Subjects

24 CFR Part 70

Volunteers, Davis-Bacon, HUD-determined wage rates, Waiver of prevailing wage rates.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Aged, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

21 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income

housing, Rent subsidies, Reporting and recordkeeping requirements.

21 CFR Part 890

Civil rights, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

21 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Aged, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Public housing, Reporting and recordkeeping requirements.

21 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

21 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

21 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Numbers are: 14.120, 14.128, 14.122, 14.129, 14.138, 14.218, 14.219, 14.228, 14.156, 14.182.

Accordingly title 24 of the Code of Federal Regulations is amended to read as follows:

1. A new part 70, consisting of §§ 70.1 through 70.5, is added to 24 CFR to read as follows:

PART 70—USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES

Sec.

70.1 Purpose and authority.

70.2 Applicability.

70.3 Definitions.

70.4 Procedures for implementing prevailing wage exemptions for volunteers.

70.5 Procedures for obtaining HUD waiver of prevailing wage rates for volunteers.

Authority: Sec. 955, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j)), 5310 and 12 U.S.C. 1701q(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 70.1 Purpose and authority.

(a) This part implements section 955 of the National Affordable Housing Act (NAHA), which provides an exemption from the requirement to pay prevailing wage rates determined under the Davis-Bacon Act or (in the case of laborers and mechanics employed in the operation of public housing projects, and architects, technical engineers, draftsmen and technicians employed in the development of public housing projects) determined or adopted by HUD, for volunteers employed on projects that are subject to prevailing wage rates under Title I of the Housing and Community Development Act of 1974 (including Community Development Block Grants, section 108 loan guarantees, and Urban Development Action Grants), under section 12 of the United States Housing Act of 1937 (public housing development and operation and section 8 projects), and under section 202 of the Housing Act of 1959 for elderly and handicapped housing projects prior to the effective date of the amendment of section 202 by section 801 of NAHA. This part also implements other provisions that provide an exemption for volunteers, including section 286 of NAHA (the HOME program), section 202 of the House Act of 1959, as amended by NAHA (supportive housing for the elderly), and any later-enacted exemptions.

(b) This part is also applicable to all HUD programs for which there is a statutory provision allowing HUD to waive Davis-Bacon wage rates for volunteers that are not otherwise employed at any time on the work for which the individual volunteers. These programs include section 811 of NAHA (supportive housing for persons with disabilities), FHA mortgage insurance programs under sections 221(d)(3) and (d)(4) (each with respect to cooperative housing projects only), 221(h)(1) (but only where a nonprofit organization undertakes the construction), 235(j)(1) (but only where a nonprofit organization undertakes the construction), 231, 232, 236 and 242 of the National Housing Act, rehabilitation under section 312 of the Housing Act of 1964 and college housing under section 402 of the Housing Act of 1950.

(c) This part provides definitions and procedures for determining allowable payments to volunteers, determining who is a bona fide volunteer, and otherwise implementing exemptions from and waivers of prevailing wage requirements where volunteers are employed.

§ 70.2 Applicability.

This part applies to all HUD programs for which there is a statutory exemption from Davis-Bacon or HUD-determined prevailing wage rates for volunteers or a statutory provision allowing HUD waiver of Davis-Bacon prevailing wage rates for volunteers. The programs to which this part applies include the programs listed in section 70.1(a) and (b) and any other program for which a statutory exemption or HUD waiver provision for volunteers is enacted. This part does not, however, apply to HUD waivers of prevailing wage requirements under section 20 of the United States Housing Act of 1937 for public housing residents who volunteer a portion of their labor (see 24 CFR 964.41). This part also does not apply to the contribution of labor by an eligible family under the Mutual Help Homeownership Opportunity Program for Indian families under section 202 of the United States Housing Act of 1937.

§ 70.3 Definitions.

(a) A *volunteer*, for purposes of this part, is an individual who performs service for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, on a HUD-assisted or insured project which is subject to a requirement to pay prevailing wage rates.

(1) Individuals shall be considered volunteers only where their services are offered freely and without pressure and coercion, direct or implied, from an employer.

(2) An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers.

(b) *Expenses, reasonable benefits, or nominal fees* may be provided to volunteers without the status of the volunteer being lost but only after a determination is made by HUD on a case-by-case basis by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation. Subject to this determination:

(1) A payment for an *expense* may be received by a volunteer for items such as uniform allowances or reimbursement for reasonable cleaning expenses or wear and tear on personal clothing worn while performing the volunteer work. Additionally, reimbursement for approximate out-of-pocket expenses for the cost of meals and transportation expenses may be made.

(2) *Reasonable benefits* may constitute inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plan or length of service awards.

(3) A *nominal fee* is not a substitute for compensation and must not be tied to productivity. The decision as to what constitutes "nominal" must be made on a case-by-case basis and in the context of the economic realities of the situation.

(4) The phrase *economic realities* means that in determining whether the fee described in paragraph (b)(3) of this section may be deemed "nominal", the amount of the fee must be judged in the context of what paid workers doing the same work would earn in the particular locality involved. For example, a "payment" made to a "homeless" volunteer in an amount which covers basic necessities but nonetheless represents an insignificant amount when compared with local cost of living and real wages may be determined to be nominal for purposes of qualifying as a volunteer, provided the payment is not in fact a substitute for compensation and is not tied in any way to productivity.

(c) *Prevailing wage rates*, for purposes of this part, means:

(1) Wage rates required to be paid to laborers and mechanics employed in the construction (including rehabilitation) of a project (or in the case of public housing, the development of the project), as determined by the Secretary of Labor under the Davis-Bacon Act;

(2) Wage rates required to be paid to laborers and mechanics employed in the operation of a public housing project, as determined or adopted by the Secretary of HUD; and

(3) Wage rates required to be paid to architects, technical engineers, draftsmen and technicians employed in the development of a public housing project, as determined or adopted by the Secretary of HUD.

§ 70.4 Procedure for implementing prevailing wage exemptions for volunteers.

(a) This section applies to those HUD programs for which there is a statutory exemption for volunteers, as referenced in § 70.1(a).

(b) Local or State agencies or private parties whose employees are otherwise subject to Davis-Bacon or HUD-determined prevailing wage rates which propose to use volunteers and wish to pay the volunteers' expenses, reasonable benefits, or nominal fees shall request a determination from HUD that these payments meet the criteria in § 70.3(b). A written determination shall be provided to the requester by the

Department within ten days of receipt by the Department of sufficient information to allow for the determination.

(c) A determination under paragraph (b) shall not be construed in any way as limiting the use of bona fide volunteers on HUD-assisted construction, but rather is required to ensure that the Department performs its appropriate responsibilities under Reorganization Plan No. 14 of 1950 and related Department of Labor Regulations in title 29 CFR part 5, regarding the administration and enforcement of the Davis-Bacon and Related Acts, and its responsibility for the administration and enforcement of HUD-determined or adopted wage rates in the operation of public housing assisted under the United States Housing Act of 1937.

(d) For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, a description of the project (location, cost, nature of the work), and the number of volunteers and the hours of work they performed. The entity responsible for recording this information shall also provide a copy of this information to HUD.

(e) For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating certified payrolls) shall provide HUD the information in paragraph (d) of this section, along with the names of the volunteers.

(f) Volunteers who receive no expenses, benefits or fees described in (c) and are otherwise bona fide shall be recorded as in (d) or (e).

§ 70.5 Procedure for obtaining HUD waiver of prevailing wage rates for volunteers.

(a) This section applies to those HUD programs under which HUD is statutorily authorized to waive prevailing wage requirements for volunteers, as referenced in § 70.1(b).

(b) Local or State agencies or private parties whose employees are otherwise subject to prevailing wage rates and which wish to use volunteers shall request a waiver of prevailing wage requirements from HUD for the volunteers. A request for waiver shall indicate that the proposed volunteers are volunteering their services for the

purposes of lowering the costs of construction. The request shall include information sufficient for HUD to make a determination, as required by statute, that any amounts saved through the use of volunteers are fully credited to the corporation, cooperative, or public body or agency undertaking the construction and a determination that any payments to volunteers meet the criteria in section 70.3(b). Information regarding the crediting of amounts saved is required in order to insure that the statutorily prescribed purpose of lowering the costs of construction is fulfilled by passing savings from the use of volunteers on to the sponsor or other body or agency undertaking the construction, rather than permitting the retention of any savings as a windfall by a contractor or subcontractor. A written waiver shall be provided to the requestor by the Department within ten days of receipt by the Department of sufficient information to meet the requirements for a waiver.

(c) For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, the name, location, and HUD project number (if any) of the project, the number of volunteers, and type of work and hours of work they performed. The entity responsible for recording this information shall provide a copy of the information to HUD.

(d) For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating certified payrolls) shall provide HUD the information in (c) of this section, along with the names of the proposed volunteers.

2. Appendix A to subtitle A of title 24 of the CFR is amended by revising section 535 to read as follows:

Appendix A to Subtitle A—Hope for Public and Indian Housing Homeownership Program

Section 535. Labor Standards.

Pursuant to section 12 of the 1937 Act, Davis-Bacon or HUD-determined prevailing wage rates (or both) shall apply to activities under the HOPE 1 program, except that these wage rate requirements do not apply to volunteers

under the conditions set out in 24 CFR part 70. In addition, if other Federal programs are used in connection with the HOPE 1 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the Public and Indian Housing Modernization or CDBG program is used in connection with the program, the labor standards requirements of those programs would apply to the extent required by them.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715f), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 221.544(a)(3) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

4. In § 221.538, paragraph (b)(2) is revised to read as follows:

§ 221.538 Applicability of prevailing wage requirements.

(b) * * *

(2) Where, in connection with the construction of a project involving a cooperative, investor-sponsor, or rehabilitation sales mortgage, the requirements have been waived for voluntarily donated labor under 24 CFR part 70.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

5. The authority citation for part 231 continues to read as follows:

Authority: Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 231.8, paragraph (b)(2) is revised to read as follows:

§ 231.8 Supervision of Mortgages.

(b) *Private Mortgage-Nonprofit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgage-Nonprofit except that:

(2) In connection with a Private Mortgage-Nonprofit the provisions of § 207.19(d) of this chapter (Labor standards and prevailing wage requirements) apply except when waived for voluntarily donated labor

under 24 CFR part 70. No charge shall be made by a Private Mortgage-Nonprofit for accommodations, facilities or services offered by the project except those charges approved by the Commissioner.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

7. The authority citation for part 232 continues to read as follows:

Authority: Sec. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Sections 232.70 and 232.73 are revised to read as follows:

§ 232.70 Labor Standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the regulations under 29 CFR part 5, except to the extent that such standards and provisions are waived for voluntarily donated labor under 24 CFR part 70.

§ 232.73 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that (except to the extent waived for voluntarily donated labor under 24 CFR part 70) the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

9. The authority citation for part 242 continues to read as follows:

Authority: Secs. 211, 233(f), 242, National Housing Act, (12 U.S.C. 1715b, 1715n(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

10. In § 242.67, paragraph (b) is revised to read as follows:

§ 242.67 Labor standards.

* * *

(b) *Waiver of compliance with contract requirements in cases of voluntarily donated labor—public mortgagor or private nonprofit mortgagor.* In the case of a public mortgagor or a private nonprofit mortgagor, the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section may be waived under 24 CFR part 70.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

11. The authority citation for part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5300–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. Paragraph (c) of § 570.496 is revised to read as follows:

§ 570.496 Program requirements.

(c) *Labor standards.* Section 110(a) of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units. In accordance with section 110(b) of the Act, the labor standards requirements of this paragraph are inapplicable to individuals who volunteer their services under the conditions set out in 24 CFR part 70.

13. Section 570.603 is revised to read as follows:

§ 570.603 Labor standards.

(a) Section 110(a) of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). By reason of the

foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(b) Under section 110(b) of the Act, the requirements set out in paragraph (a) of this section are inapplicable to individuals who volunteer their services under certain circumstances. Grantees, subrecipients, contractors and subcontractors shall comply with 24 CFR part 70, which sets out the circumstances under which volunteers may be used.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

14. The authority citation for part 880 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)).

15. Paragraph (d) of § 880.210 is revised to read as follows:

§ 880.210 Other Federal requirements.

(d) *Davis-Bacon and related Acts.* Participation in this program requires that payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of any project with nine or more assisted units and compliance with all other related rules, regulations and requirements.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

16. The authority citation for part 881 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

17. Paragraph (d) of § 881.210 is revised to read as follows:

§ 881.210 Other Federal requirements.

(d) *Davis-Bacon and related Acts.* Participation in this program requires payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of any project with nine or more assisted units and compliance with all other related rules, regulations and requirements.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

18. The authority citation for part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. Paragraph (c)(6) of § 882.407 is revised to read as follows:

§ 882.407 Other Federal requirements.

(c) * * *

(6) The following labor standards provisions (for Agreements covering 9 or more assisted units):

(i) Provisions of section 12 of the United States Housing Act of 1937 requiring payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the rehabilitation of the project;

(ii) Contract Work Hours and Safety Standards Act;

(iii) Copeland Act; and

(iv) Department of Labor regulations in 29 CFR part 5 and other implementing regulations.

20. Paragraph (c)(7) of § 882.713 is revised to read as follows:

§ 882.713 Other Federal requirements.

(c) * * *

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in

the construction or rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

21. Paragraph (c)(1) of § 882.804 is revised to read as follows:

§ 882.804 Other Federal requirements.

(c) ***
(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5), must be paid to all laborers and mechanics employed in the development of the project, other than volunteers under the conditions set out in 24 CFR part 70;

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

22. The authority citation for part 883 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

23. Paragraph (d) of § 883.312 is revised to read as follows:

§ 883.312 Other Federal requirements.

(d) *Davis-Bacon and related Acts.* Participation in this program requires that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of any new construction or substantial rehabilitation project with nine or more assisted units, and requires compliance with all related rules, regulations and requirements.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

24. The authority citation for part 884 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c,

and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

25. Paragraph (d) of § 884.113 is revised to read as follows:

§ 884.113 Other Federal requirements.

(d) *Davis-Bacon wage rates.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of any new construction project with nine or more assisted units.

26. Paragraph (b)(5) of § 884.207 is revised to read as follows:

§ 884.207 Submission of acceptance of notification and certification of compliance.

(b) ***
(5) Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), will be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of any new construction project with nine or more assisted units;

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

27. The authority citation for part 885 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

28. Paragraphs (d)(1) (i) and (ii) of § 885.740 are revised to read as follows:

§ 885.740 Other Federal requirements.

(d) ***
(1) ***
(i) Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the construction or rehabilitation of the project.
(ii) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work

Hours and Safety Standards Act (40 U.S.C. 327-333).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

29. The authority citation for part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. Paragraph (c)(2) of § 886.313 is revised to read as follows:

§ 886.313 Other Federal requirements.

(c) ***
(2) Where the property contains nine or more units to be assisted, the requirement to pay not less than the wage rates prevailing in the locality, as predetermined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the rehabilitation work, and the labor standards provisions contained in the Contract Work Hours and Safety Standards Act, Copeland Anti-Kickback Act, and implementing regulations of the Department of Labor.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

31. The authority citation for part 889 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959, as amended (12 U.S.C. 1701(q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

32. Paragraph (d) of § 889.265 is revised to read as follows:

§ 889.265 Other Federal requirements

(d) *Labor standards.* (1) Any contract for the construction (including rehabilitation) of affordable housing with 12 or more units assisted with funds made available under this part shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR Part 70) who are employed in the development of

affordable housing involved, and such contracts shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 U.S.C. 327-333).

(2) Sponsors, Owners, contractors and subcontractors must comply with all related rules, regulations, and requirements.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

33. The authority citation for part 890 continues to read as follows:

Authority: Sec. 811 of the National Affordable Housing Act (42 U.S.C. 8013), and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

34. Paragraphs (d) (1) and (2) of § 890.260 are revised to read as follows:

§ 890.260 Other Federal requirements.

(d) * * *

(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5), must be paid to all laborers and mechanics employed in the construction (including rehabilitation) of the project, except where HUD waives these requirements for voluntarily donated labor under 24 CFR part 70.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

PART 905—INDIAN HOUSING PROGRAMS

35. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937 (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

36. Paragraphs (c)(1) and (2) of § 905.120 are revised to read as follows:

§ 905.120 Compliance with other Federal requirements.

(c) *Wage rates for laborers and mechanics.* (1) With respect to construction work on a project, including a modernization project (except for nonroutine maintenance work, as described in paragraph (b) of the definition in § 905.102), the IHA and its contractors shall pay not less than

the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by an IHA or its contractors for work or contracts over \$2000.

(2) With respect to all maintenance work on a project, including nonroutine maintenance work (as described in paragraph (b) of the definition in § 905.102) on a modernization project, the IHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (after a determination under state, Tribal or local law) by HUD pursuant to section 12 of the United States Housing Act of 1937, to all laborers and mechanics (other than volunteers under the circumstances set out in 24 CFR part 70) who are employed by an IHA or its contractors.

PART 941—PUBLIC HOUSING DEVELOPMENT

37. The authority citation for part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

37a. Paragraph (d) of § 941.208 is revised to read as follows:

§ 941.208 Other Federal requirements.

(d) *Prevailing wages.* Participation in this program requires that not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR Part 70) who are employed in the development of a project. All architects, technical engineers, draftsmen and technicians (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality as determined or adopted by HUD (42 U.S.C. 1437j). Prevailing wages determined under State law are inapplicable under the circumstances set out in § 941.503(d).

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

38. The authority citation for part 961 continues to read as follows:

Authority: Section 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. In § 961.40, paragraph (a)(2) introductory text is revised and a new paragraph (a)(2)(iii) is added, as follows:

§ 961.40 Other Federal requirements.

(a) * * *

(1) * * *

(2) The provisions of paragraph (a) of this section shall not apply to labor contributed under any of the following circumstances:

(iii) Labor is performed by volunteers under the conditions set out in 24 CFR part 70.

PART 968—PUBLIC HOUSING MODERNIZATION

40. The authority citation for part 968 continues to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d and 1437l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

41. Paragraphs (e)(1), (e)(2) and (f) of § 968.110 are revised to read as follows:

§ 968.110 Other program requirements.

(e) *Wage rates.* (1) *Davis-Bacon.* With respect to modernization work or contracts over \$2,000 (except for nonroutine maintenance work), all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5).

(2) *HUD-determined.* With respect to all nonroutine maintenance work or contracts, all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(f) *Technical wage rates.* All architects, technical engineers, draftsmen and technicians (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of a project shall be paid not less than the wages prevailing

in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

Dated: April 13, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-9002 Filed 4-21-92; 8:45 am]

BILLING CODE 4210-32-M

Federal Register

Wednesday
April 22, 1992

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone;
Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

Protection of Stratospheric Ozone (FRL-4125-2)

AGENCY: Environmental Protection Agency.

AGENCY: Supplemental proposed rule.

SUMMARY: On September 4, 1991, EPA published a Notice of Proposed Rulemaking in the Federal Register concerning the protection of stratospheric ozone (56 FR 43842). That notice proposed standards and requirements regarding the servicing of motor vehicle air conditioners and restrictions on the sale of small containers of Class I or Class II substances pursuant to section 609 of the Clean Air Act as amended (Act). The September 4, 1991 proposal would require that only approved equipment be used to perform service for consideration on motor vehicle air conditioners. Two types of equipment could be approved; equipment that recovers refrigerant and recycles it on-site and equipment that only recovers refrigerant. The refrigerant from recover only equipment may be recycled on-site or sent off-site for reclamation. The Agency proposed a standard for recover/recycle equipment (proposed appendix A), but reserved proposing the standard for recover only equipment pending development of an appropriate standard.

Today's supplemental notice proposes a standard for approval of recover equipment. This proposed standard follows closely the Society of Automotive Engineers (SAE) draft "Standard J2209: CFC-12 Extraction Equipment for Mobile Automotive Air Conditioning Systems."

DATES: Written comments on this supplemental proposed rule must be received on or before May 22, 1992, if no hearing is held, or June 8, 1992, if a hearing is held. EPA will conduct a public hearing on this notice if requested. If a hearing is requested, it will be held on May 12, 1992. All requests for a hearing should be made to Lena Nirk at (202) 260-7411 within ten days of publication of this notice.

ADDRESSES: Comments on this supplemental proposed rulemaking should be submitted [in duplicate if possible] to: Public Docket No. A-91-41, room M-1500 (LE-131), Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon, and from

1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. A hearing, if requested, will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lena Nirk, Stratospheric Ozone Protection Branch Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M street SW, Washington, DC 20460. (202) 260-7411.

SUPPLEMENTARY INFORMATION:

I. Background

Title VI of the Act is designed to protect the stratospheric ozone layer. Section 609 of the Act requires the Administrator to promulgate regulations establishing standards and requirements regarding the servicing of motor vehicle air conditioners by November 15, 1991. On September 4, 1991, the Agency published the proposed rule implementing this section. In that notice, the Agency proposed establishing two separate standards for "approved refrigerant recycling equipment". Only equipment certified as meeting the standards is approved for use in the servicing of motor vehicle air conditioners under section 609 of the Act.

One standard applies to recover/recycle equipment that extracts refrigerant from the motor vehicle air conditioner and cleans the refrigerant on-site (recover/recycle equipment). Underwriters Laboratory currently certifies this type of equipment using the standards developed by the Society of Automotive Engineers (SAE). These SAE standards cover recommended service procedures for the containment of CFC-12 (SAE J1989), recycle equipment (SAE J1990), and a purity standard for recycled refrigerant (SAE J1991). EPA has proposed these SAE standards as the basis for certifying recover/recycle equipment (see appendix A to subpart B, 56 FR 43855, September 4, 1991).

The second standard applies to equipment that recovers but does not recycle refrigerant (recover only equipment). The refrigerant from these recover only machines would typically be sent off-site for purification, but it may be recycled on-site to the SAE J1991 standard of purity. In the September 4, 1991 notice, EPA reserved proposal of the recover only standard pending SAE completion of such a standard. The SAE has now submitted the draft standard entitled "SAE J2209: CFC-12 Extraction Equipment for Mobile Automotive Air Conditioning Systems" to the Agency. Today's supplemental notice proposes

SAE J2209 as the standard for certification of recover only equipment in appendix B to subpart B. The Agency's editorial comments are included in the standard in brackets.

For both recover/recycle equipment and recover only equipment, the "properly using" definition in the September 4, 1991 notice applies. Also, the Agency will designate independent standards testing organizations approved to certify compliance with the standards in both Appendices. The September 4, 1991 notice discusses the requirements for approval of such testing organizations.

II. Standard for Recover Only Equipment

The standard proposed today contains specifications for labeling the recovery equipment once it is certified, safety requirements, operating instructions and a functional description of the equipment, including hose and fitting specifications, overfill protection requirements and additional storage tank requirements. The standard requires that the container for used refrigerant be gray with a yellow top and be marked in black print "Dirty Refrigerant—Do Not Use Without Recycling". The standard states that the recovery equipment must be able to separate lubricant and recovered refrigerant and accurately indicate the amount removed from the air conditioning system in order to assure that the proper amount of lubricant can be returned to the system.

The Act states that standards developed by the Administrator shall, as a minimum, be as stringent as SAE J1990 in effect as of the date of November 15, 1990. The Standard proposed today is equally as stringent as SAE J1990 regarding the procedure for extracting refrigerant and separating lubricant from refrigerant. It offers further specification on extraction efficiency (referring to 102 mm of mercury versus the more general statement regarding removal "to a vacuum"). Procedures and requirements regarding unintentional releases of refrigerant during the extraction process are equivalent to SAE J1990 and because recover only equipment does not purge non-condensable gases from the refrigerant collected, no CFC-12 is released in the process. Refrigerant removed from motor vehicle air conditioners with recover only equipment must be either recycled on-site to the SAE J1991 standard of purity or sent off-site to a reclamation facility for purification to ARI 700-88, a higher standard of purity than SAE J1991. Requirements

concerning reclamation facilities and their ability to assure that refrigerant meets the ARI 700-88 standard of purity will be addressed in the section 608 requirements.

The standard proposed today as appendix B is a draft SAE recommended practice. It represents a consensus of the Interior Climate Control Committee on SAE. This committee is made up of automotive industry experts, equipment and supply manufacturers, and chemical producers. SAE prepared the standards (SAE J1989, SAE J1990, SAE J1991) in appendix A and the Agency believes this standard is consistent with the specifications required in those standards for recovery. The Agency believes this standard is appropriate for recovery equipment as discussed in the September 4, 1991 proposed regulation because it achieves environmental protection through efficient recovery of refrigerant and protects automobile equipment through lubricant removal indication.

EPA understands that SAE members are currently in the process of voting on the SAE J2209 standard and that changes may be incorporated into the standard in this process. EPA will consider any suggested changes submitted during the public comment period for this supplemental proposal, whether submitted by SAE or the public. The Agency understands the importance of consistency between the motor vehicle air conditioning industry standards and standards established by the Agency, however the Agency reserves the right to only adopt appropriate changes to the standard. The Agency would like to clarify that comments on this proposal should address the substance of this proposal and not the September 4, 1991 notice. The agency requests comment on any problems that may result from proposing this draft industry standard and the technical stringency of the standard versus the SAE J1990 standard. Also, the Agency requests information on the cost of recover equipment.

III. Substantially Identical Equipment

The Act states that equipment purchased before the proposal of regulations under this section shall be considered certified if it is "substantially identical" to approved equipment. This applies to recover/recycle equipment, as well as recover only equipment.

The Agency's views on implementation of the "substantially identical" provision are discussed in some detail in the September 4, 1991 Notice. In general EPA proposes to follow the same basic approach in implementing this provision for recover

only equipment as for recover/recycle equipment. The Agency is aware that although some recover only machines have been sold, until recently manufacturers of these machines did not have the opportunity to have machines certified as the standard had not been developed. As proposed by the Agency, recover equipment that is certified to meet the proposed standard in appendix B will be "approved equipment." Where the models sold in the past are the same as models that are approved, this equipment will be considered substantially identical. In situations where the models sold were not the same as the approved model, EPA will consult with U.L. and other approved independent standards testing organizations to evaluate the previously sold equipment. EPA will use U.L. test data and any additional information submitted by the manufacturer (process diagrams and lists of components) in the evaluation. EPA will maintain a list of equipment determined to be substantially identical. An essential criteria for evaluation is that equipment removes refrigerant as efficiently as the SAE J2209 standard and separates lubricant from refrigerant. The Agency is also interested in ensuring safety in operation of the equipment. Manufacturers may consider the possibility of retrofit kits to bring the pre-certification models up to the performance standard of certified models. EPA would require that the retrofit kits also be approved by an approved independent standards testing organization and owners of equipment must indicate in their certification to the Agency (as discussed in the September 4, 1991 proposal) that they have retrofitted equipment.

EPA is aware of some cases in which equipment purchased before this supplemental proposal was produced by manufacturers that no longer make equipment. In situations where equipment was purchased without certification and no model by that manufacturer achieves certification, EPA will evaluate the equipment on a model-by-model basis. Owners of the equipment, if they can not contact manufacturers to determine the status of equipment, must submit process flowsheets and lists of components and EPA reserves the right to inspect the equipment and request samples or refrigerant if necessary. The address for submittal of information is: MACs Recycling Program Manager, Stratospheric Ozone Protection Branch (ANR-445), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, Attention:

Substantially Identical Equipment Review.

EPA will maintain a very strict interpretation of the substantially identical clause in order to protect the air-conditioning units and the integrity of the recycling program. EPA requests comment on its approach to the substantially identical clause, the feasibility of the approach for reviewing recover only equipment and the specifics of the EPA performance criteria contained in the standard.

IV. Additional Information

A. Regulatory Impact Analysis

Executive Order No. 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic industries; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency determined that the September 4, 1991 proposed regulation did not meet the definition of a major rule under E.O. 12291. This supplemental proposal does not alter that determination. The Agency, however, has prepared an analysis to assess the impact of the proposed regulation (see Costs and Benefits of MACs Recycling, May 24, 1991) which is available for review in the public docket for this rulemaking. This supplemental proposal does not impose any additional burdens as defined by E.O. 12291.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. § 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. § 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. § 605(b).

The Agency performed an initial regulatory flexibility analysis for the September 4, 1991 proposal that this notice supplements. No additional RFA

need be prepared for this supplemental proposal because the details of this technical appendix did not alter the original analysis.

C. Paperwork Reduction Act

An information collection request was prepared by EPA (ICR No. 1432.07) for the September 4, 1991 proposal. The contents of this technical appendix do not alter that analysis. A copy of the ICR may be obtained by writing to the Information Policy Branch (PM-223), U.S. EPA, 401 M Street SW, Washington, D.C. 20460 or by calling (202) 260-2740.

List of Subjects for 40 CFR Part 82

Chlorofluorocarbons, Clean Air Act Amendments of 1990, Motor vehicle air conditioning, Stratospheric ozone layer.

Dated: April 14, 1992.

William K. Reilly,
Administrator.

For the reasons set out in the Preamble, EPA proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The Authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7671-7671q.

2. EPA proposes to amend part 82 subpart B, proposed at 56 FR 43842 (September 4, 1991), by adding appendix B, to read as follows:

Appendix B to Subpart B—Standard for Recover Equipment

Draft SAE J2209, issued September, 1991

SAE RECOMMENDED PRACTICE: CFC-12 EXTRACTION EQUIPMENT FOR MOBILE AUTOMOTIVE AIR CONDITIONING SYSTEMS¹

1.0 Background

CFCs deplete the stratospheric ozone layer that protects the Earth against harmful ultraviolet radiation. To reduce the emissions of CFCs, the 1990 Clean Air Act requires recycle of CFC-12 (R-12) used in mobile air conditioning systems to eliminate system venting during service operations. SAE J1990 establishes equipment specifications for on-site recovery and reuse of CFCs in mobile A/C systems. Establishing extraction equipment specifications for R-12 will provide service facilities with equipment to assure that venting of refrigerant will not occur.

2.0 Scope

The purpose of this document is to provide equipment specifications for CFC-12 (R-12) recovery for return to a refrigerant reclamation facility that will process it to ARI

(Air-Conditioning and Refrigeration Institute) standard 700-88 [in effect as of November 15, 1990] as a minimum. It is not acceptable that the refrigerant removed from a mobile air conditioning system with this equipment be directly returned to a mobile air conditioning system.

This information applies to equipment used to service automobiles, light trucks and other vehicles with similar CFC-12 systems.

3.0 Specification and General Description

3.1 The equipment must be able to extract CFC-12 from a mobile air conditioning system.

3.2 The equipment discharge or transfer fitting shall be unique to prevent the unintentional use of extracted CFC-12 to be used for recharging auto air conditioners.

3.3 The equipment shall be suitable for use in an automotive service garage environment as defined in 6.8.

3.4 Equipment Certification. The equipment must be certified by Underwriters Laboratories or an equivalent certifying laboratory to meet J2209.

3.5 Label Requirements. The equipment shall have a label "Design Certified by (company name) to meet SAE J2209 for use with CFC-12. The refrigerant from this equipment shall not be directly used in a mobile air conditioning system." The minimum letter size shall be bold type 3mm in height.

4.0 Safety Requirements

4.1 The equipment must comply with applicable federal, state and local requirements on equipment related to the handling of R-12 material. Safety precautions [notices, or labels] related to the safe operation of the equipment shall also be prominently displayed on the equipment and should also state "Caution, Should be operated by certified personnel." The safety identification shall be located on the front near the controls.

4.2 The equipment must comply with applicable safety standards for electrical and mechanical requirements.

5.0 Operating Instructions

5.1 The equipment manufacturer must provide operating instructions, necessary maintenance procedures and source information for replacement parts and repair.

5.2 The equipment must prominently display the manufacturer's name, address and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6.0 Functional Description

6.1 The equipment must be capable of insuring recovery of the CFC-12 from the system being serviced by reducing the system pressure below atmospheric to a minimum of 102 mm of mercury. To prevent system delayed outgassing, the unit must have a device that assures that the refrigerant has been recovered from the air conditioning system.

6.1.1 The testing laboratory certification of the equipment capability is required which shall process contaminated refrigerant samples at specific temperatures.

6.2 Contaminated CFC-12 samples shall be processed at ambient temperatures of 10 and 49 [degrees] Centigrade.

6.2.1 Contaminated CFC-12 sample. [6.2.2 deleted] Standard contaminated CFC-12 refrigerant, 13.6 Kg sample size, shall consist of liquid CFC-12 with 100 ppm (by weight) moisture at 21 C and 45,000 ppm (by weight) mineral oil 525 SUS nominal and 770 ppm (by weight) of noncondensable gases (air).

6.3 Portable refillable containers used in conjunction with this equipment must meet applicable [Department of Transportation] DOT standards.

6.3.1 The container color must be gray with yellow top to identify that it contains used CFC-12 refrigerant. It must be permanently marked on the outside surface in black print at least 20 mm high "Dirty Refrigerant—Do Not Use Without Recycling."

6.3.2 The portable refillable container shall have a SAE 3/16 flare male thread connection as identified in SAE J639 CFC-12 high pressure charging valve. [EPA questions the reference to figure 2 since no figure is provided.]

6.3.3 During operation the equipment shall provide overfill protection to assure that the storage container, internal or external, liquid fill does not exceed 80% of the tank's rated volume at 21 C per DOT standards, CFR Title 49, section 173.304 and the American Society of Mechanical Engineers.

[6.4] Additional Storage Tank Requirements.

[6.4.1] The cylinder valve shall comply with the standard for cylinder valves, UL 1769.

[6.4.2] The pressure relief device shall comply with the pressure relief device standard part 1—cylinders for compressed gases, CGA pamphlet S-1.1.

[6.4.3] The container assembly shall be marked to indicate the first retest date which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent five years. The marking shall be in letters at least 6 mm high.

6.5 All flexible hoses must meet SAE J2196 standard for service hoses.

6.6 Service hoses must have shut off devices located within 30 cm of the connection point to the system being serviced to minimize introduction of non-condensable gases into the recovery equipment and the release of the refrigerant when being disconnected.

6.7 The equipment must be able to separate the lubricant from the recovered refrigerant and accurately indicate the amount removed from the system during processing in 30 ml units.

6.7.1 The purpose of indicating the amount of lubricant removed is to assure that a proper amount is returned to the mobile air conditioning system for compressor lubrication.

6.7.2 Refrigerant dissolved in this lubricant must be accounted for to prevent system lubricant overcharge of the mobile air conditioning system.

6.7.3 Only new lubricant, as identified by the system manufacturer, should be replaced in the mobile air conditioning system.

¹ The standard reproduced here is identical to the SAE J2209 standard submitted to the Agency in October, 1991 except for the Agency's editorial comments. These comments appear in brackets.

6.7.4 Removed lubricant from the system and/or the equipment shall be disposed of in accordance with applicable federal, state and local procedures and regulations.

6.8 The equipment must be capable of continuous operation in ambient [temperature] of 10 C to 49 C degrees and comply with 6.1.

6.9 The equipment should be compatible with leak detection material that may be present in the mobile air conditioning system.

7.0 For test validation, the equipment is to be operated according to the manufacturer's instructions.

8.0 This recommended practice will become a J standard one year after first publication.

[FR Doc. 92-9222 Filed 4-21-92; 8:45 am]

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Water

Wednesday
April 22, 1992

PART IV

Department of the Interior

Bureau of Indian Affairs

1992 Assessment Rates for Operation and Maintenance of the Salt River Indian Irrigation Project, Maricopa County, AZ; Notice

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****1992 Assessment Rates for Operation and Maintenance of the Salt River Indian Irrigation Project, Maricopa County, AZ****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Notice of rate change.

SUMMARY: The purpose of this document is to give the public notice of the current assessment rates for operating and maintaining the Salt River Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including pumped water and maintaining the facilities, for the year.

The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 became effective approximately December 9, 1991. That settlement changed the assessed acreage. No process was defined by the parties to the settlement, that the Area Director is aware of, to address his responsibility in accordance with 25 CFR part 171 to announce the annual assessment rate. Therefore, his staff has provided the Community a detailed estimate of the cost to operate the Salt River Project for the 1992 Calendar Year and the Community has responded with proposed assessment rates.

The assessment rate is \$50 per acre leased and entitles the payer to 3 acre feet of water per acre. The spill water rate is \$9 per acre foot. Excess water (beyond the 3 acre feet per acre when no spill water is available) rate is \$35 per acre foot. The acreage used to determine the assessment rate includes the total acreage leased for farming at this time, 7649 acres.

Enrolled Community members irrigating their own property will be charged \$10 per acre foot of water delivered to their property. They will not be charged the assessment rate.

The Settlement causes all sources of water to belong to the Community to be distributed wherever they direct below the Arizona Canal. The Community is expected to take over the operation and maintenance of the Project in the future, therefore this cooperative effort appears appropriate.

DATES: The rates stated in this public notice became effective January 1, 1992, and will remain in effect until the Community takes over the Salt River

Indian Irrigation Project or until changed by action of the Area Director.

FOR FURTHER INFORMATION CONTACT: Superintendent, Salt River Agency, Route 1, Box 117, Scottsdale, Arizona 85256, telephone COM (602) 640-2842.

SUPPLEMENTARY INFORMATION: 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).

The 1991 basic operation and maintenance charges were calculated using the estimated operation and maintenance costs for calendar year 1991 and dividing that amount by the historic "assessable" acres. Additional sources of water beyond Bartlett Dam and the Kent Decree were delivered at actual cost. The year began with a serious drought situation. Nearly the highest amount of rain ever recorded for Phoenix in March occurred in 1991. As a result, more water was delivered for the assessment rate than anticipated (approximately 3 acre feet per acre) and most of the alternative sources were not required.

The basic 1991 assessment rate was \$38 per acre and included delivery of 2 acre feet per acre of water. The rate for the next 1.25 acre feet ordered beyond the 2 included in the basic assessment was \$43. The rate for delivery of Central Arizona Project water, if ordered, was \$48.41 for the first 0.7 acre foot and \$51.88 for the next 0.7 acre foot. Spill water was not charged against the apportionment and was delivered for \$9 per acre foot.

There was some confusion at the beginning of this year. There was no process identified in the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 for notification and declaration that the "Effective Date" had occurred. The last activity required in the Act was concluded December 9, 1991. At that time, the Community became entitled to a number of new sources of water (phased in) for use both north and south of the canal on all irrigable acres. The former "assessed" lands became history. In addition, nearly all available sources of water belong to the Community (they do not have to buy them at different rates like in 1991).

The decisions reported in this publication represent concurrence on the part of the parties involved that the leaseholders and Community members can farm and the Project can complete basic operation and maintenance with these rates in 1992. These decisions were agreed to April 1, 1992, at the Community headquarters. Participants included: Community leaders,

Community staff, BIA Area Office and Salt River Agency staff, leaseholders and Community farmers.

It was agreed at that meeting that funds collected beyond the minimum required to operate the Project would be used to install more canal measuring structures, replace obsolete maintenance equipment and improve the weed control process. It was also agreed that meetings between interested parties to the Project would continue at approximately monthly intervals to report on Project activities and finances; discuss potential improvements in operations and sources of other resources; begin setting rates for 1993; and establish a process for transfer of the Project to the Community when they are ready. The Superintendent will be responsible for arranging these meetings during 1992.

Salt River Indian Irrigation Project 1992 Operation and Maintenance Assessment Rates*Basic Assessment*

The basic operation and maintenance rate against the leased farmland in the Salt River Irrigation Project to which water can be delivered through the irrigation project works is hereby fixed at the rate of \$50 per acre for delivery of 3 acre feet of water. Irrigation water will not be delivered until the basic operation and maintenance assessments are made. Payment of the basic assessment may be made in two installments if the leaseholder's past accounts are in good standing. The first half (\$25 per acre) by May 1, 1992, and the second half by July 1, 1992.

The rate for excess water will be \$35 per acre foot. The rate for spill water will be \$9 per acre foot. Spill water will not be charged against the apportionment of three acre feet per acre this year. Since spill water is no longer "free" to the Community, as a result of the Act, in future years it may NOT be accounted for or charged in this manner.

Community Members

Enrolled members of the Community and their spouses who farm their own land will not be subject to the basic assessment rate. They may purchase water at the rate of \$10 per acre foot. They may purchase spill water, if available, for \$9 per acre foot. Payment will be required at the time of the order.

Municipal and Industrial

The rate for delivery of water for Municipal and Industrial purposes is hereby fixed at \$85 per acre foot.

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.

Delivery of Water

Delivery of water shall be made to all tracts of land for which the basic assessment is paid and water delivery rates are paid as set for the year 1992

and until further notice as long as the Bureau of Indian Affairs operates the Salt River Indian Irrigation Project.

Dated: April 8, 1992.

Wilson Barber, Jr.,
Phoenix Area Director.

[FR Doc. 92-9314 Filed 4-21-92; 8:45 am]

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Federal Register

**Wednesday
April 22, 1992**

Part V

Department of Health and Human Services

National Institutes of Health

**Recombinant DNA Research: Actions
Under the Guidelines; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Recombinant DNA Research: Actions Under the Guidelines**

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth eight actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Legislation, National Institutes of Health, building 31, room 4B11, Bethesda, Maryland 20892, (301) 496-9838.

SUPPLEMENTARY INFORMATION: Today eight actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These eight proposed actions were published for comment in the *Federal Register* of July 2, 1991 (56 FR 30398), September 3, 1991 (56 FR 43686), November 4, 1991 (56 FR 56415), and January 3, 1992 (57 FR 316) reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on February 10-11, 1992.

I. Background Information and Decisions on Actions Under the NIH Guidelines**A. Addition of Appendix D-XXIV to the NIH Guidelines**

In a letter dated October 18, 1991, Dr. Gary J. Nabel of the University of Michigan Medical School, Ann Arbor, Michigan, indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee (HGTS) and the RAC for formal review and approval. The title of this protocol is: "Immunotherapy of Malignancy by In Vivo Gene Transfer into Tumors." This request was published for comment in the *Federal Register* on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the Human Gene Therapy Subcommittee (HGTS) meeting on November 21-22, 1991. Provisional approval was given with the following conditions: (i) Amend consent form regarding possibility of

sensitization to the human antigen; (ii) expand the clinical protocol regarding the number of biopsies; (iii) make available the nucleotide sequence analysis of the total construct of the vector; and (iv) provide clarification concerning the status of DNA integration in tumor cells. Dr. Nabel submitted the requested documentation to ORDA. The protocol was then forwarded to the RAC for consideration during the February 10-11, 1992, meeting. This request was published for comment in the *Federal Register* on January 3, 1992 (57 FR 316).

During the meeting on February 10, 1992, the RAC met to review the protocol and recommendations from the HGTS. A modification was requested to the patient's informed consent document in the Description of Treatment or Procedures to be Undertaken section. The revised wording in the consent form is to read as follows:

"By using techniques in the laboratory it is now possible to prepare large amounts of human DNA or genetic material and bacteria. This DNA will be mixed with fat bodies called liposomes, and we plan to transport the mixture into your tumor by a bacterial carrier or delivery system.

Also included in this package is a separate bacterial gene which helps us trace the location of the DNA liposome mixture. Once introduced into the tumor the DNA produces a protein which stimulates tissue rejection. This protein, known as HLA-B7, causes the cells which will contain it to be recognized as a foreign enemy by your immune system.

The purpose of our study is to determine whether this treatment will induce the cells of your immune system, known as lymphocytes, to attack and kill your tumor."

The RAC, by a vote of 13 in favor, 0 opposed, and 1 abstention, approved the protocol. The following section may be added to Appendix D:

Appendix D-XXIV

Dr. Gary J. Nabel of the University of Michigan Medical School, Ann Arbor, Michigan, can conduct gene therapy experiments on twelve patients with melanoma or adenocarcinoma. The patient population will be limited to adults over the age of 18 and female patients must be postmenopausal or have undergone tubal ligation or orchiectomy. The patient's immune response will be stimulated by the introduction of a gene encoding for a Class I MHC protein, HLA-B7, in order to enhance tumor regression. DNA/liposome-mediated transfection techniques will be used to directly transfer the foreign gene into tumor cells. HLA-B7 expression will be confirmed in vivo and the immune response stimulated by the expression of this antigen will be characterized.

These experiments will be analyzed for their efficacy in treating cancer.

I accept this recommendation and appendix D-XXIV of the NIH Guidelines will be added accordingly.

B. Addition of Appendix D-XXV to the NIH Guidelines

In a letter dated October 10, 1991, Dr. Kenneth Cornetta of Indiana University, Indianapolis, Indiana, indicated his intention to submit a human gene transfer protocol to the HGTS and the RAC for formal review and approval. The title of this protocol is: "Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia." This request was published for comment in the *Federal Register* on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the HGTS meeting on November 21-22, 1991. Provisional approval was given with the following conditions: (1) Amend the consent form regarding the possible benefit of the introduction of the gene; (ii) amend the consent form regarding compensation to the patient related to the research aspects of the protocol; (iii) demonstrate that the transduced leukemic cells will survive the freezing process; and (iv) add a statistical section that addresses the interpretation of recurrence of disease in labeled bone marrow specimens; it is important to determine how many cells contribute to a relapse. Dr. Cornetta submitted the requested documentation to ORDA. The protocol was then forwarded to the RAC for consideration during the February 10-11, 1992, meeting. The request was published for comment in the *Federal Register* on January 3, 1992 (57 FR 316).

During the meeting on February 11, 1992, the RAC met to review the protocol and recommendations from the HGTS. It was decided that the issues raised by the HGTS had been adequately addressed. The RAC, by a vote of 15 in favor, 1 opposed, and no abstentions, approved the protocol. The following section may be added to appendix D:

Appendix D-XXV

Dr. Kenneth Cornetta of Indiana University, Indianapolis, Indiana, can conduct gene transfer experiments on up to 10 patients with acute myelogenous leukemia (AML) and up to 10 patients with acute lymphocytic leukemia (ALL). The patient population will be limited to persons between 18 and 65 years of age. Using the LNL-6 vector, autologous bone marrow cells will be marked with the neomycin resistance gene. Gene marked and untreated bone marrow cells will be reinfused at the time of bone marrow transplantation. Patients will then be monitored for evidence of the neomycin resistance gene in peripheral blood and bone marrow cells in order to determine whether

relapse of their disease is a result of residual malignant cells remaining in the harvested marrow, or inadequate ablation of the tumor cells by chemotherapeutic agents. Determining the source of relapse may indicate whether or not purging of the bone marrow is a necessary procedure for these leukemia patients. Further studies will be performed in order to determine the percentage of leukemic cells that contain the LNL-6 vector and the clonality of the marked cells.

I accept this recommendation and Appendix D-XXV of the NIH Guidelines will be added accordingly.

C. Addition of Appendix D-XXVI to the NIH Guidelines

In a letter dated October 15, 1991, Dr. James S. Economou of the University of California, Los Angeles, indicated his intention to submit a human gene transfer protocol to the HGTS and the RAC for formal review and approval. The title of this protocol is: "The Treatment of Patients With Metastatic Melanoma and Renal Cell Cancer Using *In Vitro* Expanded and Genetically-Engineered (Neomycin Phosphotransferase) Bulk, CD8(+) and/or CD4(+) Tumor Infiltrating Lymphocytes and Bulk, CD8(+) and/or CD4(+) Peripheral Blood Leukocytes in Combination With Recombinant Interleukin-2 Alone, or with Recombinant Interleukin-2 and Recombinant Alpha Interferon." This request was published for comment in the *Federal Register* on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the HGTS meeting on November 21-22, 1991. Provisional approval was given with the following conditions: (i) All data concerning vector safety and testing must be submitted; (ii) patient eligibility will be limited to those with at least one lesion that can be biopsied post therapy; (iii) the schedule for the post therapy assessment of cell trafficking is to be added; (iv) develop a statistical section for analysis of cell trafficking; (v) submit proportionality experiments demonstrating the limits of the ability to quantitate differences in ratio of the two vectors; (vi) submit data showing stable integration of the genetic markers in chronic cell cultures; (vii) modify the consent form so that the language concerning biopsies is moved from the biomodulator section to the viral marker section; and (viii) include a stopping rule in the protocol if the *in vivo* trafficking data is uninterpretable. Dr. Economou submitted the requested documentation to ORDA. The protocol was forwarded to the RAC for consideration during the February 10-11, 1992, meeting. The request was

published for comment in the *Federal Register* on January 3, 1992 (57 FR 316).

During the meeting on February 11, 1992, the RAC met to review the protocol and recommendations from the HGTS. It was decided that the issues raised by the HGTS had been adequately addressed. The RAC, by a vote of 15 in favor, 0 opposed and no abstentions, approved the protocol. The following section may be added to appendix D:

Appendix D-XXVI

Dr. James S. Economou of the University of California, Los Angeles, can conduct gene transfer experiments on 20 patients with metastatic melanoma and 20 patients with renal cell carcinoma. These patients will be treated with various combinations of tumor-infiltrating lymphocytes and peripheral blood leukocytes, including CD8 and CD4 subsets of both types of cells. These effector cell populations will be given in combination with interleukin-2 (IL-2) in the melanoma patients and IL-2 plus alpha interferon in the renal cell carcinoma patients. The effector cells will be transduced with the neomycin resistance gene using either the LNL6 or G1N retroviral vectors. This "genetic marking" of the tumor-infiltrating lymphocytes and peripheral blood lymphocytes is designed to answer questions about the trafficking of these cells, their localization to tumors, and their *in vivo* lifespan.

I accept this recommendation and Appendix D-XXVI of the NIH Guidelines will be added accordingly.

D. Addition of Appendix D-XXVII to the NIH Guidelines

In a letter dated October 8, 1991, Dr. Philip D. Greenberg of the University of Washington, Seattle, Washington, indicated his intention to submit a human gene therapy protocol to the HGTS and the RAC for formal review and approval. The title of this protocol is: "A Phase I/II Study of Cellular Adoptive Immunotherapy Using Genetically Modified CD8 + HIV-Specific T Cells for HIV-Seropositive Patients Undergoing Allogeneic Bone Marrow Transplant." This request was published for comment in the *Federal Register* on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the HGTS meeting on November 21-22, 1991. Approval was given with the following requested changes in the patient consent form: (i) Reword the language regarding unforeseen problems; (ii) reword the language concerning the costs associated with the research aspects of the protocol and billing to the patients; (iii) clearly distinguish between the therapy and the gene modification portions of the protocol; (iv) use less technical terminology throughout the document;

and (v) provide hard copies of the helper-virus assay and vector testing slides presented during the HGTS meeting. Dr. Greenberg submitted the requested documentation to ORDA. The protocol was forwarded to the RAC for consideration during the February 10-11, 1992, meeting. The request was published for comment in the *Federal Register* on January 3, 1992 (57 FR 316).

During the meeting on February 11, 1992, the RAC met to review the protocol and recommendations from the HGTS. It was decided that the issues raised by the HGTS had been adequately addressed. The RAC, by a vote of 16 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to appendix D.

Appendix D-XXVII

Dr. Philip D. Greenberg of the University of Washington, Seattle, Washington, can conduct gene transfer experiments on up to 15 HIV seropositive patients undergoing allogeneic bone marrow transplantation for non-Hodgkin's lymphoma to evaluate the safety and efficacy of HIV-specific cytotoxic T lymphocyte (CTL) therapy. CTL will be transduced with a retroviral vector (HyTK) encoding a gene that is a fusion product of the hygromycin phosphotransferase gene (HPH) and the herpes virus thymidine kinase (HSV-TK) gene. This vector will deliver both a marker gene and a suicide gene in these T cell clones in the event that patients develop side effects as a consequence of CTL therapy. Data will be correlated over time, looking at multiple parameters of HIV disease activity. The objectives of these studies include evaluating the safety and toxicity of CTL therapy, determining the duration of *in vivo* survival of HIV-specific CTL clones, and determining if ganciclovir therapy can eradicate genetically modified, adoptively transferred CTL cells.

I accept this recommendation and appendix D-XXVII of the NIH Guidelines will be added accordingly.

E. Amendment to Appendix D-XV of the NIH Guidelines

In a letter dated December 20, 1991, Drs. R. Michael Blaese and W. French Anderson of the National Institutes of Health, Bethesda, Maryland, requested an action item concerning a major amendment to the protocol entitled, "Treatment of Severe Combined Immunodeficiency Disease (SCID) due to Adenosine Deaminase (ADA) Deficiency With Autologous Lymphocytes Transduced With a Human ADA Gene." This protocol was originally approved by the RAC at its meeting on July 31, 1990, and approved by the Director, NIH, published in the *Federal Register* on September 12, 1990 (55 FR 37565).

The requested amendment would use CD-34+ cells (the peripheral blood stem cell fraction) transduced with the gene coding for adenosine deaminase (ADA) as a supplemental therapy for patients with ADA deficiency. The request was published for comment in the *Federal Register* on January 3, 1992 (57 FR 316), and a correction notice published in the *Federal Register* on July 18, 1991 (56 FR 33174).

During the meeting on February 10-11, 1992, the RAC met to review this amendment to the protocol. The RAC, by a vote of 11 in favor, 3 opposed and 2 abstentions, approved the amendment to the protocol. The following section may be appended to appendix D-XV:

Appendix D-XV

In addition to the conditions outlined in the initial approval, patients may be given a supplement of CD 34+ enriched peripheral blood lymphocytes (PBL) which have been placed in culture conditions that favor progenitor cell growth. This enriched population of cells will be transduced with the retroviral vector, G1NaSvAd. G1NaSvAd is similar to LASN, yet distinguishable by the polymerase chain reaction (PCR). LASN has been used to transduce peripheral blood T lymphocytes with the ADA gene. Lymphocytes and myeloid cells will be isolated from patients over time and assayed for the presence of the LASN or G1NaSvAd vectors. The primary objectives of this protocol are to transduce CD34+ peripheral blood cells with the adenosine deaminase gene, administer these cells to patients, and determine if such cells can differentiate into lymphoid and myeloid cells in vivo. There is a potential for benefit to the patients in that these hematopoietic progenitor cells may survive longer, and divide to yield a broader range of gene-corrected cells.

I accept this recommendation and appendix D-XV of the NIH Guidelines will be amended accordingly.

F. Amendment to Sections III-A and IV-C of the NIH Guidelines Regarding Notice of Meeting and Proposed Actions; Amendment to Introduction, Parts II, and V of the Points to Consider Regarding Review by the Human Gene Therapy Subcommittee

During the HGTS meeting on July 30-31, 1991, a Working Group on the Future Role of the Recombinant DNA Advisory Committee was established to prepare a report about the feasibility of merging the HGTS and the RAC. This request was published for comment in the *Federal Register* on November 7, 1991 (56 FR 56415).

The HGTS received a report from this working group during its meeting on November 21-22, 1991, which recommended that: (i) All eligible HGTS members be added to the RAC as full voting members; or (ii) all of the HGTS

members be added to the RAC as non-voting members; or (iii) joint meetings would be held in which the HGTS would vote on the proposed action first, followed by the full RAC. During the meeting, the following motion passed by a vote of 11 in favor, 2 opposed, and no abstentions:

We move to recommend to the Recombinant DNA Advisory Committee, that its subcommittee, the Human Gene Therapy Subcommittee, be merged into the parent committee. The number of meetings per year of the Recombinant DNA Advisory Committee would increase to four per year. There would be a transition period of one year in which the Recombinant DNA Advisory Committee would begin to review proposed actions as the sole review group. The following provisions would apply: (i) The Human Gene Therapy Subcommittee would codify a set of guidelines for shortening the review process, and (ii) the eligible members of the Human Gene Therapy Subcommittee would be brought onto the Recombinant DNA Advisory Committee as full voting members in keeping with the nomination process for Federal Advisory Committees.

The HGTS forwarded the proposal to the RAC for consideration during the February 10-11, 1992, meeting.

In a letter dated December 23, 1991, Dr. Nelson Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, stated that amendments will need to be made to the NIH Guidelines in sections III-A and IV-C and to the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects in the Introduction, Parts II, and V, in the event that the HGTS recommendations are accepted. If the recommendation on having more meeting dates to accommodate the expected increase in human gene transfer/therapy protocols is accepted, the Notices of Meeting and Proposed Actions will need to be changed from thirty days to fifteen days to allow expedited review. Changes are required in Sections III-A and IV-C of the NIH Guidelines. If the recommendation to have the HGTS merge into the parent committee is approved, all references to the HGTS will need to be deleted in the Points to Consider, in the Introduction, and Parts II, and V.

These requests were published for comment in the *Federal Register* on January 3, 1992 (57 FR 316).

During the meeting on February 10, 1992, the RAC met to review the requests of the HGTS and Dr. Wivel. The RAC, by a vote of 14 in favor, 0 opposed and no abstentions, approved: (1) To eliminate review of the human gene transfer/therapy protocols by the HGTS; this established sole review of

the protocols by the RAC; and (2) to change all references to thirty day Notice of Meeting and Proposed Actions to fifteen days. The RAC also recommended increasing the number of times the committee meets from three times a year to four times a year.

The following sections will be amended in the NIH Guidelines: Sections III-A, IV-C-1-b-(1), section IV-C-2, section IV-C-3-b-(1), section IV-C-3-b-(2). The amended sections will read:

Section III-A. Experiments That Require RAC Review and NIH and IBC Approval Before Initiation

Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, the publication of the proposal in the *Federal Register* for 15 days of comment, review by the RAC, and specific approval by NIH. The containment conditions for such experiments will be recommended by the RAC and set by NIH at the time of approval. Such experiments also require * * *

Section IV-C-1-b-(1). Major Actions. To execute major actions, the Director, NIH, must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the *Federal Register* at least 15 days before the meeting, and the Director, NIH, will also publish the proposed actions in the *Federal Register* for comment at least 15 days before the meeting.

In addition, the Director's proposed decision, at his/her discretion, may be published in the *Federal Register* for 15 days of comment before final action is taken. The Director's final decision * * *

Section IV-C-2. Recombinant DNA Advisory Committee. * * * All meetings of the RAC will be announced in the *Federal Register*, including tentative agenda items, 15 days in advance of the meeting with final agendas, if modified, available at least 72 hours before the meeting. No item defined as * * *

Section IV-C-3-b-(1). Announcements of RAC meetings and agendas at least 15 days in advance; NOTE—If the agenda * * *

Section IV-C-3-b-(2). Proposed major actions of the type falling under Section IV-C-1-b-(1) at least 15 days prior to the RAC meeting at which they will be considered; and

The following sections will be amended to the Points to Consider: The Introduction, Parts II, and V. This document was published in the *Federal Register* on March 1, 1990 (55 FR 7437), amended September 12, 1990 (55 FR 37565), and amended July 18, 1991 (56 FR 33174). The amended sections will read:

Introduction. (1) * * * RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the *Federal Register*, and an opportunity for public comment. RAC's recommendation on each proposal will be

forwarded to the NIH Director for a decision which will then be published in the **Federal Register**.

Introduction. (4) * * * The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC. Consideration of proposals by the RAC may proceed simultaneously with review by any other Federal agencies provided that the RAC is notified of the simultaneous review. Meetings of the RAC will be open to the public except where trade secrets or proprietary information would be disclosed. The committee * * *.

Introduction. (6) * * * Part III summarized other requested documentation that will assist the RAC in their review of the proposals. Part IV specified reporting requirements.

Introduction. (7) The RAC will not at present entertain proposals for germ line alterations * * *.

Introduction. (9) In their evaluation of proposals involving the transfer of recombinant DNA into human subjects, the RAC will consider whether the design * * *. Accordingly, this document requests information that will enable the RAC to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment of personnel or relatives).

Introduction. (10) In recognition of the social concern that surrounds the subject of gene transfer, the RAC will cooperate with other groups * * *.

Introduction. (12) * * * Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the RAC, may refer to preceding documents without having to rewrite such materials.

Part II. Special Issues. Although the following issues are beyond the normal purview of local IRBs, the RAC requests that the investigators respond to questions A and B below.

Part V. Minor Modifications. A minor change in a protocol approved by the RAC is a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects. If the change has been approved by the relevant IRB and IBC, then the Chair of the RAC may give approval. It is expected that the Chair will consult with one or more members of the committee, as necessary. The Chair will report on any such approvals at the next regularly scheduled meeting of RAC.

I accept this recommendation to amend accordingly the NIH Guidelines in sections III-A and IV-C and to amend the Points to Consider in the Introduction, Parts II, and V.

G. Amendment to Appendices B-I-B-1 and B-I-B-2 of the NIH Guidelines regarding the Bacterial Order, Actinomycetales

In a written request dated April 15, 1991, Dr. Diane O. Fleming, representing the Mid-Atlantic Biological Safety

Association, requested that only pathogenic genera and species of the bacterial order, Actinomycetales, be included in Appendix B-I-B-1 of the NIH Guidelines.

It was proposed that the following pathogens be included in the list of Bacterial Agents in Appendix B-I-B-1 of the NIH Guidelines as follows:

Actinomadura madurae, Actinomadura pelletieri, Actinomyces bovis, Actinomyces israelii, Nocardia asteroides, Nocardia brasiliensis

In appendix B-I-B-2, the entry under Actinomycetes would be deleted.

This request was reviewed at the RAC meeting on May 30-31, 1991. Following a discussion there was agreement that Actinomyces should be removed from the list of fungi and reclassified as bacteria. There was disagreement, however, about the number of species to be listed as pathogens. Reviewers and committee members expressed concern that the number of possible pathogens may be larger than the six species proposed for inclusion. The RAC requested that Dr. Fleming consult with leading experts on Actinomycetales and develop a revised and expanded list of potential pathogens to be reviewed at the RAC meeting on October 7-8, 1991. This request was published for comment in the **Federal Register** on September 3, 1991 (56 FR 43686).

A second list of potential pathogens was submitted to the RAC. This included 63 organisms, a number that was reduced to 56 by clarification of taxonomic names and was reviewed by Dr. Lechevalier at Rutgers University, Dr. Blaine Beaman of the University of California at Davis, and Drs. Michael McNeil and Richard Knudsen at the Centers for Disease Control (CDC). Drs. McNeil and Knudsen presented a synopsis of their review at the RAC meeting of October 7-8, 1991.

During the October 7-8, 1991, RAC meeting, a motion was passed by a vote of 19 in favor, 0 opposed, and no abstentions to create an ad hoc working group within the RAC, plus outside consultants, to provide an amended list of pathogens.

On November 13, 1991, the RAC Working Group on Actinomycetales held a telephone conference call for the purpose of proposing a list of pathogens. Drs. B. Murray, D. Fleming, D. Krogstad, and M. Schaechter participated. Originally, a list of 19 organisms was developed; this included both the proven pathogens identified by the CDC and the suspected pathogens identified by the CDC that were also part of risk group 2 (BL-2) in the German classification, "Klassifizierung Der Bakterien Nach Den Im Ungang Mit Ihnen Auftretenden

Gefahren." These organisms are as follows:

Actinomadura madurae, Actinomadura pelletieri, Amycolata autotrophica, Dermatophilus congolensis, Gordona bronchialis, Gordona sputi, Nocardia asteroides, Nocardia brasiliensis, Nocardia otitidiscaviarum, Nocardia farcinica, Nocardia nova, Nocardia transvalensis, Nocardiosis dassonvillei, Rhodococcus equi, Rhodococcus aichiensis, Rhodococcus chubuensis, Rhodococcus rhodochrous, Rhodococcus ruber, Streptomyces Somaliensis.

Alternatively, a list of organisms representing only proven pathogens, as established by the CDC, would read as follows:

Amycolata autotrophica, Dermatophilus congolensis, Nocardia asteroides, Nocardia brasiliensis, Nocardia otitidiscaviarum, Nocardia transvalensis, Rhodococcus equi.

The request was published for comment in the **Federal Register** on January 3, 1992 (57 FR 316).

During the meeting on February 10, 1992, the RAC discussed the recommendations of the Working Group on Actinomycetales. The RAC, by a vote of 13 in favor, 0 opposed, and no abstentions, accepted the working group's recommendation to adopt the CDC classification of organisms with proven pathogenicity.

The following proven pathogens of the bacterial order, Actinomycetales, will be added to Appendix B-I-B-1, Bacterial Agents:

"Amycolata autotrophica, Dermatophilus congolensis, Nocardia asteroides, Nocardia brasiliensis, Nocardia otitidiscaviarum, Nocardia transvalensis, Rhodococcus equi."

The following organisms will be deleted from appendix B-I-B-2, Fungal Agents:

"Actinomycetes (including Nocardia species, Actinomyces species, and Arachnia propionica)[2]."

I accept this recommendation and Appendices B-I-B-1 and B-I-B-2 of the NIH Guidelines will be amended accordingly.

H. Amend Appendices B-I-C-1 and B-I-B-1 in the NIH Guidelines Regarding Mycobacterium Avium

In a letter dated December 18, 1991, Dr. William R. Jacobs, Jr., of the Albert Einstein College of Medicine, Bronx, New York, requested a lowering of the classification Mycobacterium avium from a Class III bacterial agent to a Class II bacterial agent. M. avium would move from Appendix B-I-C-1 to Appendix B-I-B-1 in the NIH

Guidelines. The request was published for comment in the *Federal Register* on January 3, 1992 (57 FR 316).

During the meeting on February 11, 1992, the RAC met to review this request. The basis of this request resides in the fact that CDC/NIH biosafety guidelines, that were published in 1984, recommended biosafety level 2 practices for *M. avium*. *M. avium* is ubiquitous in nature, a common contaminant in the soil, and there is no evidence that direct transmission occurs between humans. The RAC, by a vote of 14 in favor, 0 opposed, and no abstentions, approved the lowering of the classification of *Mycobacterium avium* from a Class III bacterial agent to a Class II bacterial agent. *M. avium* would move from Appendix B-I-C-1 to Appendix B-I-B-1 in the NIH Guidelines.

I accept this recommendation and Appendices B-I-C-1 and B-I-B-1 of the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Addition of Appendix D-XXIV to the NIH Guidelines

The following section is added to appendix D:

Appendix D-XXIV

Dr. Gary J. Nabel of the University of Michigan Medical School, Ann Arbor, Michigan, can conduct gene therapy experiments on twelve patients with melanoma or adenocarcinoma. Patient population will be limited to adults over the age of 18 and female patients must be postmenopausal or have undergone tubal ligation or orchiectomy. The patient's immune response will be stimulated by the introduction of a gene encoding for a Class I MHC protein, HLA-B7, in order to enhance tumor regression. DNA/liposome-mediated transfection techniques will be used to directly transfer this foreign gene into tumor cells. HLA-B7 expression will be confirmed *in vivo*, and the immune response stimulated by the expression of this antigen will be characterized. These experiments will be analyzed for their efficacy in treating cancer.

B. Addition of Appendix D-XXV to the NIH Guidelines

The following section is added to appendix D:

Appendix D-XXV

Dr. Kenneth Cornetta of Indiana University, Indianapolis, Indiana, can conduct gene transfer experiments on up to 10 patients with acute myelogenous leukemia (AML) and up to 10 patients with acute lymphocytic leukemia (ALL). The patient population will be limited to persons between 18 and 65 years of age. Using the LNL-6 vector, autologous bone marrow cells will be marked with the neomycin resistance gene. Gene marked and untreated bone marrow cells will be reinfused at the time of bone

marrow transplantation. Patients will then be monitored for evidence of the neomycin resistance gene in peripheral blood and bone marrow cells in order to determine whether relapse of their disease is a result of residual malignant cells remaining in the harvested marrow or inadequate ablation of the tumor cells by chemotherapeutic agents. Determining the source of relapse may indicate whether or not purging of the bone marrow is a necessary procedure for these leukemia patients. Further studies will be performed in order to determine the percentage of leukemic cells that contain the LNL-6 vector and the clonality of marked cells.

C. Addition of Appendix D-XXVI to the NIH Guidelines

The following section is added to appendix D:

Appendix D-XXVI

Dr. James S. Economou of the University of California, Los Angeles, can conduct gene transfer experiments on 20 patients with metastatic melanoma and 20 patients with renal cell carcinoma. These patients will be treated with various combinations of tumor-infiltrating lymphocytes and peripheral blood leukocytes, including CD8 and CD4 subsets of both types of cells. These effector cell populations will be given in combination with interleukin-2 (IL-2) in the melanoma patients and IL-2 plus alpha interferon in the renal cell carcinoma patients. The effector cells will be transduced with the neomycin resistance gene using either the LNL6 or G1N retroviral vectors. This "genetic marking" of the tumor-infiltrating lymphocytes and peripheral blood lymphocytes is designed to answer questions about the trafficking of these cells, their localization to tumors, and their *in vivo* lifespan.

D. Addition of Appendix D-XXVII to the NIH Guidelines

The following section is added to appendix D:

Appendix D-XXVII

Dr. Philip D. Greenberg of the University of Washington, Seattle, Washington, can conduct gene transfer experiments on up to 15 HIV seropositive patients undergoing allogeneic bone marrow transplantation for non-Hodgkin's lymphoma to evaluate the safety and efficacy of HIV-specific cytotoxic T lymphocyte (CTL) therapy. CTL will be transduced with a retroviral vector (HyTK) encoding a gene that is a fusion product of the hygromycin phosphotransferase gene (HPH) and the herpes virus thymidine kinase (HSV-TK) gene. The vector will deliver both a marker gene and a suicide gene in these T cell clones in the event that patients develop side effects as a consequence of CTL therapy. Data will be correlated over time, looking at multiple parameters of HIV disease activity. The objectives of these studies include evaluating the safety and toxicity of CTL therapy, determining the duration of *in vivo* survival of HIV-specific CTL clones, and determining if ganciclovir therapy can eradicate genetically modified, adoptively transferred CTL cells.

E. Amendment to Appendix D-XV of the NIH Guidelines

Appendix D-XV will read as follows:

Appendix D-XV

In addition to the conditions outlined in the initial approval, patients may be given a supplement of a CD-34+ enriched peripheral blood lymphocytes (PBL) which have been placed in culture conditions that favor progenitor cell growth. This enriched population of cells will be transduced with the retroviral vector, G1NaSvAd. G1NaSvAd is similar to LASN, et distinguishable by PCR. LASN has been used to transduce peripheral blood T lymphocytes with the ADA gene. Lymphocytes and myeloid cells will be isolated from patients over time and assayed for the presence of the LASN or G1NaSvAd vectors. The primary objectives of this protocol are to transduce CD 34+ peripheral blood cells with the adenosine deaminase gene, administer these cells to patients, and determine if such cells can differentiate into lymphoid and myeloid cells *in vivo*. There is a potential for benefit to the patients in that these hematopoietic progenitor cells may survive longer, and divide to yield a broader range of gene-corrected cells.

F. Amendment to Introduction, Section II and V of the Points to Consider Regarding Review by the Human Gene Therapy Subcommittee; Amendment to Sections III-A and IV-C of the NIH Guidelines.

The following sections will be amended in the NIH Guidelines: Sections III-A, IV-C-1-b-(1), section IV-C-2, section IV-C-3-b-(1), section IV-C-3-b-(2)). The amended sections will read:

Section III-A. Experiments That Require RAC Review and NIH and IBC Approval Before Initiation.

Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, the publication of the proposal in the *Federal Register* for 15 days of comment, review by the RAC, and specific approval by NIH. The containment conditions for such experiments will be recommended by the RAC and set by NIH at the time of approval. Such experiments also require * * *

Section IV-C-1-b-(1). Major Actions. To execute major actions, the Director, NIH, must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the *Federal Register* at least 15 days before the meeting, and the Director, NIH, will also publish the proposed actions in the *Federal Register* for comment at least 15 days before the meeting. In addition, the Director's proposed decision, at his/her discretion, may be published in the *Federal Register* for 15 days of comment before final action is taken. The Director's final decision * * *

Section IV-C-2. Recombinant DNA Advisory Committee. * * *. All meetings of the RAC will be announced in the *Federal Register*, including tentative agenda items, 15 days in advance of the meeting with final agendas, if modified, available at least 72 hours before the meeting. No item defined * * *.

Section IV-C-3-b-(1). Announcements of RAC meetings and agendas at least 15 days in advance; NOTE—If the agenda * * *.

Section IV-C-3-b-(2). Proposed major actions of the type falling under Section IV-C-1-b-(1) at least 15 days prior to the RAC meeting at which they will be considered; and

The following sections will be amended to the Points to Consider: Introduction, parts II, and V. This document was published in the *Federal Register* on March 1, 1990 (55 FR 7437), amended September 12, 1990 (55 FR 37565), and amended July 18, 1991 (56 FR 33174). The amended sections will read:

Introduction. (1) * * *. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the *Federal Register*, and an opportunity for public comment. RAC's recommendation on each proposal will be forwarded to the NIH Director for a decision which will then be published in the *Federal Register*.

Introduction. (4) * * *. The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC. Consideration of proposals by the RAC may proceed simultaneously with review by any other Federal agencies provided that the RAC is notified of the simultaneous review. Meetings of the RAC will be open to the public except where trade secrets or proprietary information would be disclosed. The committee * * *.

Introduction. (6) * * *. Part III summarized other requested documentation that will assist the RAC in their review of the proposals. Part IV specified reporting requirements.

Introduction. (7) The RAC will not at present entertain proposals for germ line alterations * * *.

Introduction. (9) In their evaluation of proposals involving the transfer of recombinant DNA into human subjects, the RAC will consider whether the design * * *. Accordingly, this document requests

information that will enable the RAC to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment of personnel or relatives).

Introduction. (10) In recognition of the social concern that surrounds the subject of gene transfer, the RAC will cooperate with other groups * * *.

Introduction. (12) * * *. Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the RAC, may refer to preceding documents without having to rewrite such materials.

Part II. Special Issues. Although the following issues are beyond the normal purview of local IRBs, the RAC requests that the investigators respond to questions A and B below.

Part V. Minor Modifications. A minor change in a protocol approved by the RAC is a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects. If the change has been approved by the relevant IRB and IBC, then the Chair of the RAC may give approval. It is expected that the Chair will consult with one or more members of the committee, as necessary. The Chair will report on any such approvals at the next regularly scheduled meeting of RAC.

I accept this recommendation to amend accordingly the NIH Guidelines in sections III-A and IV-C and to amend the Points to Consider in the Introduction, parts II, and V.

G. Amendment to Appendices B-I-B-1 and B-I-B-2 of the NIH Guidelines Regarding the Bacterial Order, Actinomycetales

Appendix B-I-B-1, Bacterial Agents, the following organisms will be added:

Amycolata autotrophica
Dermatophilus congolensis
Nocardia asteroides
Nocardia brasiliensis
Nocardia otitidiscaviarum
Nocardia transvalensis
Rhodococcus equi

Appendix B-I-B-2, Fungal Agents, the following organisms will be deleted:

"Actinomycetes (including *Nocardia* species, actinomyces species, and *Arachnia propionica*)[2]"

H. Amend Appendices B-I-C-1 and B-I-B-1 in the NIH Guidelines Regarding Mycobacterium Avium

Appendix B-I-C-1, Bacterial Agents, the following organism will be deleted:

Mycobacterium avium

Appendix B-I-B-1, Bacterial Agents, the following organism will be added:

Mycobacterium avium

OMB's Mandatory Information Requirements for Federal Assistance Program Announcements (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

EFFECTIVE DATE: April 17, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92-9368 Filed 4-17-92; 8:45 am]

BILLING CODE 4410-01-M

Federal Register

Wednesday
April 22, 1992

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Status for Five Puerto Rican Trees and Two Fish, the Goldline Darter and Blue Shiner; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Five Puerto Rican Trees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Callicarpa ampla* (capá rosa), *Styrax portoricensis* (palo de jazmín), *Ternstroemia luquillensis* (palo colorado), *Ternstroemia subsessilis* (no common name) and *Ilex sintenisii* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These species are endemic to Puerto Rico, with one possible exception, and are currently found only in the Luquillo Mountains within the Caribbean National Forest. All are extremely rare and potentially threatened by forest management practices, construction of communication facilities on high peaks, road construction and maintenance, hurricane damage, and collection. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Callicarpa ampla*, *Styrax portoricensis*, *Ternstroemia luquillensis*, *T. subsessilis* and *Ilex sintenisii*.

EFFECTIVE DATE: May 22, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera or Ms. Susan Silander at the Caribbean Field Office address (809/851-7297), or Mr. Dave Flemming at the Atlanta Regional Office address (404/331-3583 or FTS 841-3583).

SUPPLEMENTARY INFORMATION:**Background**

The Luquillo Mountains are found in the extreme northeastern part of Puerto Rico. The majority of the area (11,300 hectares) is managed by the U.S. Forest Service as the Caribbean National Forest. Four forest associations have been identified in these mountains: tabonuco, palo colorado, dwarf and

sierra palm. The five species that are the subject of this rule are restricted to the palo colorado and/or the dwarf forests. The palo colorado association is found at elevations greater than 600 meters and covers approximately 17 percent of the Caribbean National Forest. It derives its name from the palo colorado tree (*Cyrilla racemiflora*) which is dominant in this forest type. The dwarf or elfin association is found on the summits of mountains at elevations greater than 750 meters and covers only 2 percent of the Forest. This forest is composed of dense stands of short, small diameter, twisted trees and shrubs and the forest floor is covered with mosses and epiphytes. Relative humidity ranges from 95 to 100 percent and annual precipitation from 313 to 450 centimeters. Temperatures range from 11.5° to 32.5° C throughout the year, with a mean annual temperature of 21° C (Brown et al., 1983).

Callicarpa ampla (capá rosa) was described by Schauer in 1847 from specimens collected in 1827 by Wydler at an unknown location in Puerto Rico (Schauer, 1847). Since then it has been collected only seven times: Six specimens are from Puerto Rico and one reportedly came from St. Thomas, U.S. Virgin Islands (Vivaldi and Woodbury, 1981). However, whether or not the specimen indicated as having been collected from St. Thomas actually came from there is questionable (Vivaldi and Woodbury, 1981). In Puerto Rico, this species has been collected in Barranquitas, Adjuntas, Utuado, Cayey, and the Luquillo Mountains. At present, the species is known only from the palo colorado forest association in the Luquillo Mountains. Only 14 trees in 5 sites have been located. In addition, 15 seedlings were observed at one population site during post-Hurricane Hugo surveys (C. Laboy, pers. comm.).

Callicarpa ampla is an evergreen tree which may grow to 50 feet (15 meters) tall. The young twigs are 4-sided and whitish. Leaves are opposite, entire, broadest at the middle and taper to both ends. They are 4 to 10 inches (10 to 25 centimeters) long, 1½ to 3 inches (3.3 to 7 centimeters) wide, green on the upper surface, densely white scurfy below, and borne on a petiole about 1 inch (2.2 centimeters) in length. The inflorescence is branched and has numerous, small, whitish flowers each with a 4-lobed corolla about ¼ inch (.3 centimeters) long. Fruits are white when young but become purplish upon maturity, and are ¼ inch (.5 centimeter) in diameter, with the calyx attached at the base (Vivaldi and Woodbury, 1981).

Styrax portoricensis (palo de jazmín) was collected for the first time in 1885

from the eastern mountains of Puerto Rico by Paul Sintenis and described by Krug and Urban in 1892 from those same specimens. Collected only twice, in 1935 and 1954, it was thought to be extinct until rediscovered by Roy Woodbury in November 1982 (George Proctor, pers. comm.). Only one immature tree is presently known and occurs in the palo colorado forest association of the Luquillo Mountains. It suffered slight damage from Hurricane Hugo in September 1989 due to wind-thrown trees. The trees that had fallen on it were subsequently removed by the U.S. Forest Service (Carlos Laboy, pers. comm.).

Styrax portoricensis is an evergreen tree which may reach 66 feet (20 meters) in height. Leaves are alternate, without stipules, entire with margins turned under, 2½ to 4 inches (6 to 10 centimeters) long and 1¼ to 2 inches (2.75 to 4.4 centimeters) wide, tapered at both ends and widest at the middle. They are shiny dark green above, pale green below, hairless, but occasionally with scattered star-shaped scales. The inflorescence is a 3 to 6 flowered raceme, each flower being borne on a curved pedicel ⅜ to ¾ (.8 to 1.4 centimeter) long. Fruits are a one-seeded elongated drupe, about ½ inch (1.1 centimeter) in diameter, densely covered with scales and maintaining the cup-shaped calyx at the base (Vivaldi et al., 1981a).

Ternstroemia luquillensis (palo colorado) was described by Krug and Urban in 1896 on the basis of three specimens, two collected by Paul Sintenis and one collected by Eggers. It is known from both the palo colorado and dwarf forests of the Luquillo Mountains; however, two populations previously reported from the dwarf forest are no longer present. The largest was destroyed by the construction of communication towers on El Yunque peak, and the other nearby population was destroyed by a hurricane. Only six individuals in four locations, three of which are in the colorado forest type and one in the dwarf forest of Pico del Este, are presently known to occur (Vivaldi et al., 1981b). However, the two individuals of one population near Road #191 have not been relocated recently and indeed may have originally been misidentified.

Ternstroemia luquillensis is an evergreen tree reaching 60 feet (18 meters) in height. The leaves are alternate, thick and leathery, and widest at the middle but acute at both ends. They are up to 4 inches (10 centimeters) long and about 3 times longer than wide. Both surfaces are green and the

underside is black punctate. The flowers are showy, approximately 1 inch (2.5 centimeters) in diameter and the 5 petals are white or cream colored and concave. Fruits are ovoid capsules which are terminated by the persistent style. Seeds are red and about 3 millimeters in length (Vivaldi et al., 1981b).

Ternstroemia subsessilis was first collected in 1914 by J.A. Shaffer in the Luquillo Mountains and again in 1923 by Britton and Brunner at the summit of El Yunque. Although collected in the Maricao Forest in 1960 by Roy O. Woodbury, it is now apparently restricted to the palo colorado and dwarf forests of the Luquillo Mountains (Vivaldi et al., 1981c). One dwarf forest population was destroyed by the construction of communication facilities on El Yunque peak. Thirty-seven individuals in four populations, one in the dwarf forest near Pico del Este, are currently known (C. Laboy, pers. comm.).

T. subsessilis is an evergreen shrub or small tree which may reach 17 feet (5 meters) in height. Leaves are alternate, entire, stiffly coriaceous, obovate or oblanceolate, 1¼ to 3 inches (3 to 7 centimeters) long and ½ to 1 inch (1.5 to 2.8 centimeters) wide. Both leaf surfaces are dull green but the lower surface is black punctate. Flowers are solitary, white, ½ inch (1 centimeter) in diameter, sessile, and axillary at the ends of the branches. The fruit is an ovoid-conical capsule about 10 millimeters long and tapering to a sharp point. Ripe fruits were observed in May 1991.

Ilex sintenisii was first discovered by Paul Sintenis in the upper elevations of the Luquillo Mountains. This Puerto Rican endemic is found only in the Luquillo Mountains where it is restricted to the dwarf or elfin forest. The dwarf forest covers only approximately 225 hectares or 2 percent of the Caribbean National Forest. It is threatened by the potential for further construction and expansion of communication facilities on these high peaks. A total of 150 individuals in three populations have been reported.

I. sintenisii is a shrub or small tree which may reach 15 feet (4.5 meters) in height and 3 inches (7.6 centimeters) in diameter. Leaves are alternate, glabrous, obovate to elliptic, coriaceous, ¾ to 1½ inch (1 to 2.5 centimeters) long and ¼ to ¾ inch (.6 to 1.9 centimeters) wide, and notched at the apex with the edges turned under. The bark is gray, smooth, and usually covered with mosses and liverworts. The flowers are white, axillary on pedicels ¼ to ¾ inch (.6 to 1 centimeter) long, and 4 to 5 parted. Fruits and drupes are green when immature.

Callicarpa ampla, *Styrax portoricensis* and *Ternstroemia luquillensis*, and *T. subsessilis* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilippis, 1979). These tree species were included among the plants being considered as endangered or threatened by the Service, as published in the Federal Register (45 FR 82480) dated December 15, 1980; the November 28, 1983 update (48 FR 53680) of the 1980 notice; and revised of September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). These species were designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the four notices. *Ilex sintenisii* has been ranked as likely to go extinct in 5 to 10 years (Priority B) by the Center for Plant Conservation. It is considered to be a critical plant by the Natural Heritage Program of the Puerto Rico Department of Natural Resources.

In a notice published in the Federal Register on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found that listing *Callicarpa ampla*, *Styrax portoricensis*, *Ternstroemia luquillensis*, and *T. subsessilis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. The Service proposed listing these five species on April 19, 1991 (56 FR 16059), constituting the final finding under the petition process.

Summary of Comments and Recommendations

In the April 19, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the San Juan Star on May 10, 1991. Four letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The U.S. Army Corps of Engineers, Jacksonville District, reported that they did not have any actions proposed or under consideration that might affect any of these five species and did not

have any additional information on their status.

The Secretary of the Puerto Rico Department of Natural Resources supported the listing of the species. The Department's Terrestrial Ecology Division concurred with the determination and provided more accurate collection information for *Styrax portoricensis* and *Ternstroemia subsessilis*. Information for the final rule has been revised accordingly.

The U.S. Forest Service supported the listing of all five species and provided supplemental information based on recent survey and management activities conducted for these species. This additional information has been incorporated into the final rule as appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that these five trees should be classified as endangered species. Procedures found at 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 were followed. 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 *Callicarpa ampla* Schauer, *Styrax portoricensis* Krug & Urban, *Ternstroemia luquillensis* Krug & Urban, *T. subsessilis* (Britton) Kubuski, and *Ilex sintenisii* (Urban) Britton are as follows:

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

Although all five of these species are found only within the Caribbean National Forest, which is managed by the U.S. Forest Service, forest management practices such as the establishment and maintenance of plantations, selective cutting, trail and road construction and maintenance, and shelter construction may affect these trees unless their protection is given adequate consideration. The destruction of the dwarf or elfin forests for the construction and/or expansion of communication facilities by the U.S. Navy and private entities also continues to be a potential problem. A proposal for expansion of the Navy facilities on Pico del Este is currently under consideration. Individual of *Callicarpa ampla* are found along Road #191, proposed for reconstruction and

reopening in the near future with funds from the Federal Highway Administration. In addition, the extreme rarity of all these species make the loss of any one individual even more critical. The Service notes, however, that the U.S. Forest Service has stated (*in litt.*, 1991) that it is Forest Service policy to protect these species from possible effects associated with any proposed land management activity. Recent survey and management actions by the Forest Service for these species further indicate a definite commitment to their conservation.

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

Plant collecting is prohibited in the Caribbean National Forest; however, remote areas are difficult to monitor on a regular basis. The ornamental potential of these species may result in taking in the future.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Callicarpa ampla*, *Styrax portoricensis*, *Ternstroemia luquillensis*, *T. subsessilis*, and *Ilex sintenisii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, would enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Probably the most important factor affecting *Callicarpa ampla*, *Styrax portoricensis*, *Ternstroemia luquillensis*, *T. subsessilis*, and *Ilex sintenisii* in Puerto Rico is their limited distribution. Hurricane Hugo recently devastated the Caribbean National Forest, causing defoliation and breaking branches on numerous individuals. Because so few individuals are known to occur, the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Callicarpa*

ampla, *Styrax portoricensis*, *Ternstroemia luquillensis*, *T. subsessilis*, and *Ilex sintenisii* as endangered. Forest management practices such as establishment of recreation areas and plantations, road construction and maintenance, selective cutting, trail construction and maintenance have the potential to dramatically affect all these species. The impacts of hurricane damage could be devastating. The expansion of communication facilities would result in elimination of individual plants. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of individuals of *Callicarpa ampla*, *Styrax portoricensis*, *Ternstroemia luquillensis*, *T. subsessilis*, and *Ilex sintenisii* are sufficiently small that vandalism and collection could seriously affect the survival of these species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties have been notified of the location and importance of protecting these species' habitats, and the U.S. Forest Service, the only involved landowner, already has ongoing activities intended to conserve and protect these species. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 jeopardy standard.

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, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth,

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 certain activities involving listed plants are discussed, in part, below.

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

Potential Federal involvement for these five trees relates to activities to be conducted by the U.S. Forest Service, the U.S. Navy and the Federal Highway Administration in the Caribbean National Forest. A conference was conducted between the Federal Highway Administration and the Fish and Wildlife Service in order to evaluate the possible impacts of the reconstruction and reopening of Road #191 through the Caribbean National Forest. Additional surveys were conducted and measures were developed to minimize impacts and protect individuals known to be located close to the road.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State (Commonwealth) law or regulation, including State

(Commonwealth) criminal trespass law. Certain exceptions apply to agents of the Service and Commonwealth 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 anticipated that few trade permits for these five species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding Federal prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

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).

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Authors

The primary authors of this final rule are Ms. Marelisa Rivera and Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

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

Authority: 18 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Aquifoliaceae, Styracaceae, Theaceae, and Verbenaceae, 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					
Aquifoliaceae—Holly family:						
<i>Ilex sintenisii</i>	None.....	U.S.A. (PR).....	E	461	NA	NA
Styracaceae—Styrax family:						
<i>Styrax portoricensis</i>	Palo de jazmín.....	U.S.A. (PR).....	E	461	NA	NA
Theaceae—Tea family:						
<i>Ternstroemia luquillensis</i>	Palo colorado.....	U.S.A. (PR).....	E	461	NA	NA
<i>Ternstoremia subsessilis</i>	None.....	U.S.A. (PR).....	E	461	NA	NA
Verbenaceae—Verbena family:						
<i>Callicarpa ampla</i>	Capá rosa.....	U.S.A. (PR).....	E	461	NA	NA

[Final: Five Puerto Rican trees—endangered]

Dated: April 14, 1992.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 92-9392 Filed 4-21-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Threatened Status for Two Fish, the Goldline Darter (*Percina aurolineata*) and Blue Shiner (*Cyprinella caerulea*)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines the goldline darter (*Percina aurolineata*) and the blue shiner (*Cyprinella caerulea*) to be threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. The goldline darter occurs in the Cahaba River System, Alabama, and in fragmented populations in the upper Coosa River System, Georgia. The blue shiner has been extirpated from the Cahaba River System and occurs in fragmented populations in the upper Coosa River System, Alabama, Georgia, and Tennessee. These two fishes have declined due to the loss of habitat from reservoir construction and degradation of water quality, as well as the effects of habitat fragmentation. This rule implements the protection and recovery provisions afforded by the Act for the goldline darter and blue shiner.

EFFECTIVE DATE: May 22, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, MS 39213.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:**Background**

The goldline darter, *Percina aurolineata*, was described in 1967 by Suttkus and Ramsey from specimens captured in the Cahaba and Coosawatee Rivers. This darter is historically known from 49 miles of the Cahaba River and almost 7 miles of the Little Cahaba River in Alabama (Stiles 1978, 1990). It has been collected in from Schultz Creek, a Cahaba River tributary (M.F. Mettee, *in litt.*, 1990). It has been collected from the upper Coosa River drainage in the Coosawatee, Ellijay and Cartecay Rivers (Freeman 1983). The latter two are tributaries that form the Coosawatee River. The goldline darter

has also been collected in Mountaintown and Boardtown Creeks, tributaries of the Ellijay River, and from Talking Rock Creek, a tributary of the Coosawatee River below Carters Reservoir (Freeman 1983; Pierson, pers. comm., 1990; S.R. Layman, *in litt.*, 1990).

The blue shiner was described from tributaries of the Oostanaula River, Georgia, by Jordan in 1877 (Pierson and Krotzer 1987). The blue shiner is frequently mentioned in the literature as *Notropis caeruleus*. In the past, it has been recognized as a member of the subgenus *Cyprinella*. A revision of the genus *Notropis* elevated *Cyprinella* to generic status (Mayden 1989). The American Fisheries Society is revising "A List of Common and Scientific Names of Fishes from the United States and Canada" and is recognizing Mayden's elevation of *Cyprinella* to generic status (S.R. Layman, AFS Endangered Species Committee, *in litt.*, 1990).

This medium-sized minnow is historically known from the Cahaba and Coosa River systems. It was last collected from the Cahaba River system in 1971 (Ramsey 1976). The Alabama range for this species is Weogufka and Choccolocco Creeks and the lower reach of Little River (Pierson and Krotzer 1987). In Tennessee, the range includes the Conasauga River and a tributary, Minnewauga Creek. In Georgia, the blue shiner is found in the Conasauga and Coosawatee Rivers and the tributaries, Holly, Rock, Perry, and Turniptown Creeks (Freeman 1983). The species no longer exists in Big Wills Creek, a tributary of the upper Coosa River (Pierson and Krotzer 1987). Both species may have once occupied most of the upper Coosa and Alabama River drainages. The actual extent of the historic range and of the decline cannot be determined. Recent range reductions have been well documented.

The goldline darter is a slender, medium-sized fish, about 3 inches long with brownish-red and amber dorsolateral stripes. It differs from other members of the subgenus *Hadropterus* in the color pattern of the back (Kuehne and Barbour 1983). The goldline darter has a pale to dusky back. Its white belly has a series of square lateral and dorsal blotches that are separated by a pale or gold-colored longitudinal stripe. The goldline darter prefers a moderate to swift current and water depths greater than 2 feet (Howell *et al.* 1982). It is found over sand or gravel substrate interspersed among cobble and small boulders. Practically nothing is known

about the life history of the goldline darter.

The blue shiner is a medium-sized minnow that may attain 4 inches in total length. It often appears to be dusky blue with pale yellow fins (Ramsey 1986). The scales are strongly diamond-shaped and outlined with melanophores. The lateral line is distinct. Some aspects of the life history in the Conasauga River, Georgia, have been studied (Krotzer 1990). The blue shiner occurs over a sand and gravel substrate among cobble in cool, clear water (Gilbert *et al.* 1979).

Federal Register publications for the goldline darter include the notice of review on March 18, 1975 (40 FR 12297), a proposed rule on November 29, 1977 (42 FR 60765), a notice of public hearing and extension of the comment period on February 8, 1978 (43 FR 4872), a correction of proposed critical habitat on April 7, 1978 (43 FR 14697), with a withdrawal of the proposed rule for administrative reasons on January 24, 1980 (45 FR 5782), and notice of reviews on December 30, 1982 (47 FR 58454), on September 18, 1985 (50 FR 37958), and on January 6, 1989 (54 FR 554). A public hearing was held in Birmingham, Alabama, on March 15, 1978. Several studies have been conducted on this species since the proposal was withdrawn. The goldline darter was again proposed for protection in the Federal Register (56 FR 16055) on April 19, 1991.

Federal Register publications on the blue shiner include the notice of review on September 18, 1985 (50 FR 37958) and on January 6, 1989 (54 FR 554). It has not been previously proposed for Federal protection. The blue shiner was proposed for protection, along with the goldline darter, in the Federal Register (56 FR 16055) on April 19, 1991.

Summary of Comments and Recommendations

In the April 19, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in "The Advertiser," Montgomery, Alabama, on May 4, 1991, the "Chattanooga News-Free Press," Chattanooga, Tennessee, and "The Birmingham News," Birmingham, Alabama, on May 5, 1991,

"The Anniston Star," Anniston, Alabama, on May 8, 1991, and "The Daily Citizen-News," Dalton, Georgia on May 9, 1991, which invited general public comment. The Service received 19 comments on the proposal to list these two species as threatened. One Federal agency commented without expressing a position and one Federal agency concurred with the proposed rule. A local government agency expressed qualified support for the listing while discussing their continued need for the Cahaba River System as a water supply. The concerns of this agency center on impacts to the Little Cahaba River, Shelby County, Alabama. This is a different and smaller stream than the Little Cahaba River in Bibb County where the goldline darter occurs. A national conservation organization's Georgia office expressed support for the listing, as did two professional ichthyologist and 13 private individuals. There were no comments in opposition.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the goldline darter and blue shiner should be classified as threatened species. Procedures found at 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 were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the goldline darter, *Percina aurolineata*, and the blue shiner, *Cyprinella caerulea*, are as follows:

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

The goldline darter no longer occurs upstream of Booths Ford in the Cahaba River (Howell *et al.* 1982) and populations seem to have declined throughout the Cahaba River System (Stiles 1990). The goldline darter continues to exist in fragmented populations in the Coosawattee River, Georgia (Freeman 1983), in about 7 miles of the Little Cahaba River, and in 27 miles of the 49 miles of historic range in the Cahaba River, Alabama (Howell *et al.* 1982, Stiles 1990). Three adult specimens have been collected from Schultz Creek, a Cahaba River tributary (M.F. Mettee, Geological Survey of Alabama, *in litt.*, 1990). It is not known if this represents an expansion of the range or if these darters are a part of the Cahaba River population.

The blue shiner has been extirpated from the Cahaba River System (Ramsey 1976, Pierson and Krotzer 1987, Pierson *et al.* 1989). It has not been collected from Big Wills Creek of the upper Coosa River System since 1958 (Pierson and Krotzer 1987). The blue shiner continues to exist in the Coosawattee and Conasauga River systems, Georgia, in the Conasauga River system, Tennessee, in Choccolocco and Weogufka Creeks, tributaries of the Coosa River, Alabama, and at one site in Little River, Alabama (Freeman 1983, Pierson and Krotzer 1987).

The reduction in range of the goldline darter and the extirpation of the blue shiner from the Cahaba River system is the result of water quality degradation (Howell *et al.* 1982, Ramsey 1982, Pierson and Krotzer 1987). Historic populations of the goldline darter and blue shiner have been seriously affected by urbanization, sewage pollution, and strip-mining activities in the upper Cahaba River basin. During their study of the upper Cahaba River, Howell *et al.* (1982) observed adverse impacts to water quality from the Cahaba River and Patton Creek Sewage Treatment Plants, limestone quarries on Buck Creek, and strip-mining in the area of Piney Woods Creek and Booth Ford. In recent years, the Patton Creek plant has been replaced by the upgraded Cahaba River plant. Adverse impacts from these plants have been reduced.

Since he began collecting on the Cahaba River in 1962, Ramsey (1982) has observed an increase in blue-green algae, an indicator of water quality degradation, at several localities. One location in particular, just below the Shelby County Highway 52 bridge, has been adversely affected by a diminution of vascular plants, apparently displaced by a substantial growth of blue-green algae on much of the rock and rubble substrate. This loss of vascular plants is correlated with the extirpation of Cahaba shiners, goldline darters, and blue shiners from this area since 1969. The effects on the fauna of water rich in dissolved nutrients can be magnified in still pools during low flows and high temperatures. Dissolved oxygen often drops to low levels. In some stretches of the river, virtually all of the water flow in the Cahaba River during low flows consists of treated sewage effluent.

O'Neil (1984) and the Environmental Impact Statement for the Cahaba River Wastewater Facilities, Jefferson, Shelby, and St. Clair Counties, Alabama, (U.S. Environmental Protection Agency (EPA) 1979) identified and projected water quality problems in the Cahaba River. Relatively high levels of total inorganic

nitrogen and total phosphorus were found at several locations throughout the basin. Increased algal biomass, high diurnal oxygen fluctuations, and decreased oxygen were found when water levels were low. The EPA found water flow in the Cahaba River was insufficient to handle sewage needs and that alternative water supplies to increase flow could have an adverse effect on the biota.

In the Cahaba River basin, there are 10 municipal wastewater treatment plants, 35 surface mining areas, one coalbed methane and 67 other permitted discharges (Alabama Department of Environmental Management *in litt.* 1990). Since the EPA study, some of the wastewater treatment plants have been upgraded. However, this has not eliminated the problem of enrichment in the Cahaba River. Sewage that has received tertiary treatment is still high in nutrients and can contribute to eutrophication of an aquatic system. Not all plants provide tertiary treatment to their wastewater, nor are many capable of treating the heavy inflow that occasionally occurs. The Centerville-Brent plant is designed for 702,000 gallons per day. The only treatment is a three cell series of lagoons for settling. The actual flow of the Centerville-Brent plant has not been determined. The Helena waste treatment plant is designed for 250,000 gallons per day with an actual flow of 262,000 gallons per day. While this plant provides more treatment than just settling lagoons, the inflows that exceed the capacity of the plant must be bypassed. The Cahaba Wastewater Treatment Plant is designed for 12 million gallons per day and receives an average of 9 million gallons per day (Jack Swann, Jefferson County Director of Environmental Services, pers. comm. 1990). During periods of heavy inflows, i.e. rainfall, etc., the capacity of the plant is exceeded and some wastewater bypasses at least some treatment stages. During the period of December 1987 to June 1990, there were 14 reported periods when some wastewater bypassed the treatment at the Cahaba River plant (Leigh Pegues, *in litt.*, 1990). These reported periods were of 1 to 14 days duration with an estimated bypass of 520 million gallons of untreated wastewater. This release of untreated wastewater has continued into 1991 with a reported 118.5 million gallons bypassed in just over four months. Unreported and unmonitored releases of untreated wastewater continue to adversely affect the biota of the Cahaba River. The periodic influx of organic matter to the Cahaba River indicates

that many of the problems identified by the EPA continue to exist.

There is considerable interest in methane gas extraction in the Cahaba River Basin. The 2-year extension of tax incentives for methane gas extraction is expected to increase interest in that activity in the Cahaba River basin. Permitted discharge limits (based on chlorides, pH, and dissolved oxygen) are designed to maintain the fish and wildlife quality of the Cahaba River. However, the potential for the discharge of wastewater from these wells in excess of permitted levels and the subsequent impact on the goldline darter is a concern. There is also the possibility for adverse impact from other pollutants that may be in wastewater from methane gas wells. The basis for establishing water quality limits and monitoring permitted discharge is also a concern. The fish species used for toxicity testing and monitoring is the fathead minnow, *Pimephales promelas*. This species is known to be very hardy and tolerant of water quality degradation. It is not native to the Cahaba River system and may not be representative of native species. There are no mollusks used in the toxicity testing and this important group may serve as food for some fish during some life stages.

In 1978 (Howell *et al.* 1982, Stiles 1990), the goldline darter was abundant in some stretches of the Little Cahaba River. In the Little Cahaba River, there has been an increase in sediment since 1987 and a fish kill (Stiles 1990). The increase in sediment is apparently the result of road construction and clearing for a wood treatment plant, and the operation of limestone quarries and cement plants (Stiles 1990). The 1987 fish kill was possibly a result of clearing a hillside, stacking treated lumber, and the subsequent influx of sediments and wood preservatives into the Little Cahaba River by a heavy rain (Stiles 1990). In the stretch of the Little Cahaba River affected by sediment, Stiles (1990) has only collected or observed four goldline darters since 1987. In intensive collecting since September 1989, the Geological Survey of Alabama has collected only seven goldline darters in the Cahaba River system, with none of them from the Little Cahaba River (Mettee, *in litt.*, 1990). No blue shiners have been collected in that effort.

Any populations that historically occupied the upper Alabama and Coosa Rivers were undoubtedly extirpated by the near total impoundment of both rivers. Upstream of the confluence with the Cahaba River, the Alabama River has been impounded for hydropower,

navigation and flood control. With the exception of about three miles below Jordan Dam, the Coosa River is completely impounded for hydropower and flood control. In addition to extirpating any historic populations by inundation, these reservoirs have isolated tributary populations as discussed under Factor E. While the Service is unable to determine how many tributaries of the Coosa River system once contained populations of either of these species, there is no reason to conclude that the historic range did not include other tributaries.

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

Collecting of these two species is not a likely threat. However, when the population of a species is adversely impacted by habitat degradation, the removal of individuals by a collector can become more significant than if the population was healthy.

C. Disease or Predation

Both of these fish are prey species and are subject to natural disease outbreaks. As with collecting, this is not a likely threat to healthy populations. However, if a population is stressed by other factors like eutrophication, then disease and predation can be significant to the species' survival, even if they are a natural occurrence.

D. The Inadequacy of Existing Regulatory Mechanisms

Neither of these species are given any special consideration when project impacts are reviewed for compliance with various environmental laws and regulations. All the States where these species occur require scientific collecting permits. Violators of these permit requirements are very difficult to apprehend.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The range of both species has been reduced and fragmented by many reservoirs for flood control and hydropower. This has resulted in several isolated populations. Isolating populations make them very susceptible to environmental changes, may result in decreased genetic diversity and may make finding mates difficult for short-lived species, such as these species appear to be.

Impoundment of the upper Alabama and Coosa Rivers has isolated the goldline darter populations in the Cahaba River System from all other populations. Talking Rock Creek joins

the Coosawattee River in a pump storage reservoir downstream of Carters Reservoir and isolates a population of goldline darters from all other populations. The other populations of the goldline darter in the Coosawattee River System, other than in Talking Rock Creek, are not isolated by reservoirs from each other. However, they are separated by many river miles and it is unlikely there is much genetic exchange between them and improbable that a population, if extirpated, would be naturally replaced. The reason(s) for this isolation is not clear. These streams have habitat that would appear suitable, yet the species has only been collected at intermittent sites. This could be from topography or from some other reason that is not apparent. Regardless, this isolation makes a population more susceptible to environmental disturbance.

The blue shiner occurs in the Coosawattee River (one site), Turniptown Creek (one site, a tributary of the Ellijay River), at seven sites on the Conasauga River, and at single sites in three tributaries of the Conasauga River (Freeman 1983). The Coosawattee River System populations are isolated from all other populations by Carters Reservoir. Populations in the Conasauga River tributaries, Holly and Rock Creeks, are probably isolated from all other populations by distance, topography or other unknown reasons. The mainstem Conasauga River and Minnewauga Creek populations are likely accessible to each other but isolated from all other populations by distance, topography or other reasons. The blue shiner occurs in Little River and in Choccolocco and Weogufka Creeks, all Coosa River tributaries (Pierson and Krotzer 1987). The only known site in Little River is near its confluence with Weiss Reservoir. Due to the difficulty of sampling that stream, the population may be more widespread in Little River than indicated. Regardless of the extent of the Little River population, it is isolated from all other populations by Weiss Reservoir. The small population in Weogufka Creek is isolated by Lake Mitchell. There are four known sites for the blue shiner in Choccolocco Creek. The populations in Choccolocco Creek are restricted to sites above Anniston, Alabama, possibly by water quality degradation. Drainage from Anniston Army Depot enters Choccolocco Creek and there is a history of contaminant problems on that installation (Schalla *et al.* 1984, Environmental Science and Engineering, Inc. 1986, Kangas 1987). While the blue shiner still exists at several sites in the

Coosa River System, most of the populations are isolated from other populations and vulnerable to environmental changes. Any event that adversely affects an isolated population, has the potential to eliminate it.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the goldline darter and blue shiner as threatened. Threatened status was chosen because both species still exist in several fragmented populations that are apparently reproducing. These fragmented populations preclude a single event from endangering either species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. In the proposed rule, the designation of critical habitat was considered to be not prudent due to a lack of benefit over that accrued by the listing. However, since publication of the proposed rule, consideration of a not prudent finding within the Service has resulted in a determination that designation of critical habitat may be prudent but that it is not now determinable. Section 4(b)(6)(C) of the Act provides that a concurrent critical habitat determination is not required, and that the final decision on designation may be postponed for 1 additional year beyond the period specified in section 4(b)(6)(A), if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species. The Service believes that a prompt determination of threatened status for the goldline darter and blue shiner is essential to their conservation. Listing these species will provide immediate protection while also allowing the Service additional time to evaluate critical habitat needs. In the coming months, a proposed rule for the designation of critical habitat will be published for review and comment by all interested parties. Following the public review period, the Service will make a decision on the appropriate area to designate as critical habitat, if any. Adequate protection will be provided during the interim through the recovery process and the Section 7 jeopardy standard.

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. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

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

The Corps of Engineers will consider these species in project planning and permit regulation. The Environmental Protection Agency will consider both species in administering the provisions of the Clean Water Act. The Federal Highway Administration will consider these species when highway and bridge maintenance and construction is in proximity to the known range. The Federal Energy Regulatory Commission will consider both species when relicensing hydropower plants.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry,

transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

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).

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Author

The author of this rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Darter, goldline.....	<i>Percina aurolineata</i>	U.S.A. (AL,GA)	Entire.....	T	462	NA	NA
Shiner, blue.....	<i>Cyprinella</i> (= <i>Notropis</i>) <i>caerulea</i>	U.S.A. (AL,GA,TN)	Entire.....	T	462	NA	NA

(Final: Goldline darter, *Percina aurolineata*, and blue shiner, *Cyprinella caerulea*—threatened)

Dated: April 15, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-9393 Filed 4-21-92; 8:45 am]

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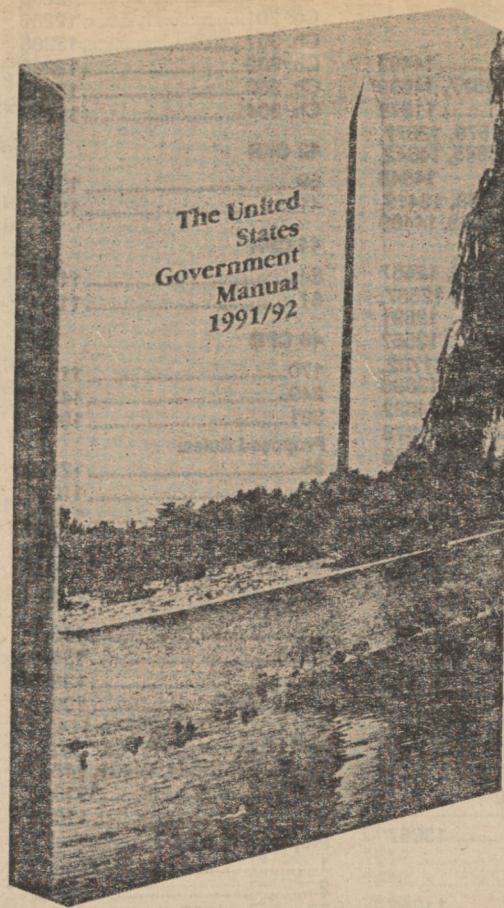
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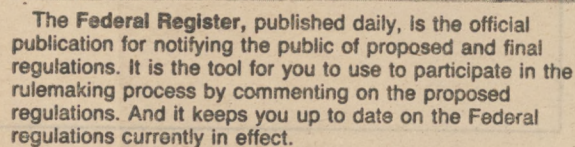
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