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(two briefings)

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 34

[Docket NO. 93-15]

Other Real Estate Owned

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing a final rule that removes two interpretive rulings concerning real estate held as other real estate owned (OREO). The final rule also adds a new subpart dealing with OREO to the OCC's regulation concerning real estate lending and appraisals. This final rule is needed to simplify and clarify OCC's requirements regarding national bank treatment of OREO. The intended effect of this final rule is to expand the options that national banks may use to dispose of OREO in order to preclude possible violations of law.

DATES: This final rule is effective on September 17, 1993.

FOR FURTHER INFORMATION CONTACT: F. John Podvin, Jr., Attorney, Bank Operations and Assets Division, (202) 874–4460; or Thomas E. Watson, National Bank Examiner, Traditional Activities Division, (202) 874–5170, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

OREO is comprised generally of all real estate acquired and held by a national bank that is not currently in use or contemplated for use in the foreseeable future as bank premises. National banks acquire most OREO through foreclosure proceedings or by similar conveyance. A national bank's ability to hold OREO, as well as other real estate, is subject to 12 U.S.C. 29, a provision of the National Bank Act.

As a general rule, under 12 U.S.C. 29, a national bank must dispose of a parcel of OREO within five years of the date that the holding period begins. However, the Comptroller may approve a national bank's application to extend the holding period for OREO up to an additional five years if: (1) The bank has made a good faith attempt to dispose of the property within the five year period; or (2) disposal within the five year period would be detrimental to the bank.

One of the OCC regulations interpreting 12 U.S.C. 29 is 12 CFR 7.3025 (§ 7.3025), which prescribes the procedures for the proper handling and disposition of a national bank's OREO. On August 8, 1979, the OCC published a final rule in the **Federal Register** (44 FR 46428) which amended § 7.3025. The amendment attempted to bring the accounting treatment of OREO into conformity with Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring, adopted by the Financial Accounting Standards Board (FASB) in June 1977. The amended § 7.3025 imposed requirements on national banks addressing several issues, including generally: how the bank must book OREO, how the bank must use appraisals to obtain and monitor the "fair value" of a parcel of OREO, what actions the bank must take if the value of the OREO deteriorates, what actions the bank may take while holding a parcel of OREO, and how the bank can meet the disposal requirements of 12 U.S.C. 29.

An accounting change that occurred after the OCC amended § 7.3025 caused conflict between the treatment of OREO under generally accepted accounting principles (GAAP) and the legal treatment under § 7.3025. In 1982, the FASB issued Statement of Financial Accounting Standards No. 66, Accounting for Sales of Real Estate (FAS 66), which altered GAAP. FAS 66 established five alternative accounting methods that a bank could use to record a sale of real estate. The introduction of FAS 66 resulted in conflicts between the treatment of OREO under GAAP and under § 7.3025.

Two statutory changes also made this rulemaking advisable. First, the Depository Institutions Deregulation and Monetary Control Act of 1980, sec. 701, Public Law 96–221, 94 Stat. 132 amended 12 U.S.C. 29 (1980 amendment). The 1980 amendment gives the OCC authority to extend the holding period for a parcel of OREO for up to five additional years subject to the conditions discussed earlier. The 1980 amendment also provides that banks may expend funds to develop and improve OREO if the expenditures are needed to enable the bank to recover its total investment in the property. Finally, the 1980 amendment provides that these expenditures can be made only upon notification to the Comptroller, subject to any conditions and limitations the Comptroller shall prescribe. These changes were previously implemented by OCC supervisory policies.

Second, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (12 U.S.C. 3331 *et seq.*) required the OCC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions. The OREO appraisal requirements in § 7.3025 predated this statutory change. The fair value appraisal requirements in § 7.3025(g) and (h) were inconsistent with the regulation implementing Title XI of FIRREA, codified at 12 CFR part 34, subpart C (the OCC's general appraisal requirements).

II. The Proposed Rule

On May 5, 1993, the OCC issued a proposed rule, pursuant to 12 U.S.C. 29 and 93a, to clarify and simplify the legal treatment of OREO. See 58 FR 26695. Furthermore, the proposed rule sought to encourage national banks to comply with the disposal requirements of 12 U.S.C. 29 by providing financing to creditworthy borrowers who wish to purchase OREO. The OCC proposed to remove two of its Interpretive Rulings: (1) Real estate acquired as salvage on uncollectible loans, codified at 12 CFR 7.3020; and (2) Other real estate owned, codified at 12 CFR 7.3025. In their place, the OCC proposed to establish a new subpart E in 12 CFR part 34, entitled Other Real Estate Owned, consolidating all OREO requirements.

With these proposed changes, the OCC intended to simplify the treatment of OREO by: (1) Increasing and expanding the options that a national bank may use to dispose of OREO; (2) eliminating inconsistencies in current OREO appraisal requirements; (3) incorporating the statutory changes discussed in the background section; (4) removing conflicting OREO accounting guidance from the current regulation; and (5) providing other miscellaneous guidance.

The OCC invited public comment on any aspect of the proposed rule for a 30-day period ending on June 4, 1993. The OCC received 39 comment letters from banks, bank holding companies, accounting firms, trade groups, individuals and the Office of Management and Budget. Thirty-six commenters specifically supported the proposed rule. Three commenters raised issues without expressing either support for or opposition to the proposed rule.

Pursuant to 12 U.S.C. 29 and 93a, this final rule revises the proposed rule based on the 39 comment letters and makes other changes to clarify the requirements in the proposed rule.

III. Review of Comments

The following is a discussion of the issues raised by the commenters, the OCC's responses to those issues, and a summary of changes made to the proposed rule.

A. Disposal and Covered Transactions Real Estate

The proposed rule provided that, for purposes of 12 U.S.C. 29, disposal of OREO occurs when a national bank enters into a sales transaction that results in the property no longer being considered covered transactions real estate (CTRE). Under the proposed rule, a parcel of OREO remains CTRE whenever the bank is involved in a transaction where: (1) The transaction is not given sales treatment under GAAP; (2) the transaction does not involve a loan guaranteed or insured by the United States Government or by an agency of the United States Government or a loan eligible for purchase by a federally sponsored instrumentality that purchases loans (direct or indirect government guarantees); and (3) the bank has not received or accumulated from the purchaser, an amount in cash, principal and interest payments, and private mortgage insurance totaling 10 percent of the sales price.

Several commenters suggested reducing the down-payment requirement in the third part of the proposed CTRE definition from 10 percent to 5 percent for residential properties. The OCC considered this suggestion but decided to keep the down-payment requirement at 10 percent for the following reasons.

A national bank will avail itself of the CTRE option for disposal under 12 U.S.C. 29 only when the transaction does not qualify for any of the other disposal options now available to national banks in this final rule. Two of the options available to national banks, sales treatment under GAAP and a direct or indirect government guarantee, generally permit down-payments of less than 10 percent of the sales price for residential property. The OCC believes that a substantial number of residential transactions will either qualify for sales treatment under GAAP, or will involve a direct or indirect government guarantee. Consequently, the OCC believes the commenters' suggestions are already incorporated into the final rule.

The OCC revised the 10 percent level in the proposed CTRE definition to include the receipt and accumulation of interest payments to encourage national banks to finance the sale of OREO parcels to creditworthy borrowers. The OCC believes the 10 percent level represents a significant investment in the property by the purchaser and demonstrates the purchaser's ability to repay a loan that did not qualify for any of the other disposal options available under this final rule.

One commenter suggested that other real estate equity, savings deposits, certificates of deposit, and investment-grade stocks and bonds should be included in the proposed CTRE definition, in addition to cash, principal and interest payments and private mortgage insurance. The OCC generally adheres to GAAP in determining which instruments can be used in lieu of cash. Since GAAP does not consider these instruments equivalent to cash for purposes of determining a down-payment, the OCC has not included them in the CTRE disposal option.

Another commenter suggested that abuse may result from deleting certain provisions in § 7.3025(b) from the proposed CTRE definition. These provisions include the prohibition on allowing loan terms more favorable than those customarily required by the bank and the requirement that the usual risks and rewards of ownership be passed from the bank to the purchaser. The commenter stated that, under the proposal, the bank could adjust the interest rate and the sales price in order to accomplish disposal under 12 U.S.C. 29.

The OCC understands that national banks need flexibility in negotiating terms to dispose of OREO. At the same time, banks must operate in accordance with prudent banking practice. The OCC believes that the potential abuse cited by the commenter can be prevented by requiring banks to measure the sales price in accordance with GAAP. Under Accounting Principles Board Opinion No. 21, when a transaction involves a non-market rate of interest, the sales price is adjusted to reflect a market rate of interest. In response to this comment, the OCC amended the CTRE disposal option to provide that the sales price is measured in accordance with GAAP.

The OCC recognized that the first two parts of the proposed CTRE definition, sales treatment under GAAP and direct or indirect government guarantees, were clearly defined disposal options that comply with 12 U.S.C. 29. However, the third part of the proposed CTRE definition concerned a transitional situation where the bank receives a down-payment and accumulates payments based on various forms of financing in order to comply with the disposal requirement under 12 U.S.C. 29. To clarify this provision, the OCC moved the first two disposal options in the CTRE definition from § 34.81(b) of the proposed rule to § 34.83(a) of the final rule. The OCC also moved the disposal provisions in the third part of the proposed CTRE definition to § 34.83(a) of the final rule. The CTRE disposal option now states that a national bank that enters into a transaction that does not qualify for disposal under any of the other disposal options in the final rule may comply with its obligation to dispose of OREO when it receives or accumulates from the purchaser, an amount in cash, principal and interest payments, and private mortgage insurance totaling 10 percent of the sales price, as measured in accordance with GAAP. Finally, the OCC changed the CTRE definition from a negative to a positive statement. The definition now states that CTRE is a parcel of debts previously contracted real estate or former banking premises that the national bank is in the process of disposing of in accordance with the CTRE disposal option.

B. Holding Period

The proposed rule contained provisions relating to the operation of the holding period for OREO, which was discussed in the background section. Several commenters raised issues about the operation of the holding period for CTRE. One commenter questioned whether the holding period in 12 U.S.C. 29 continued to run when a parcel is CTRE. The holding period of 12 U.S.C. 29 is

applicable to CTRE until disposal occurs.

The OCC amended § 34.82(b) of the proposed rule by removing a provision explaining when the holding period begins in the case of CTRE reverting to the bank. This action clarifies that the holding period: (1) Begins on the date that ownership of the property is originally transferred to a national bank; and (2) ends when a national bank enters into a sales transaction that qualifies for disposal under the CTRE disposal option.

Another commenter asked whether a bank was required to apply for an extension of the initial five year holding period if a parcel was CTRE. A parcel of CTRE is involved in a transitional financing arrangement, in which the disposal requirements of 12 U.S.C. 29 have not been met. A bank must apply to extend the holding period for up to an additional five years for every parcel of OREO, including CTRE, that will be held beyond the initial five year holding period.

By definition, CTRE indicates a bank's attempt to dispose of the parcel by financing its sale. Thus, the OCC is likely to approve a bank's application to extend the holding period for CTRE. Also, it is unlikely that parcels will remain CTRE for long periods of time because accumulated principle and interest payments will be included along with cash and private mortgage insurance in the calculation of 10 percent of the sales price, as measured in accordance with GAAP. This should speed disposition of the parcel.

Two commenters observed that a requirement to file applications for extensions of the holding period annually was burdensome. In response to these comments, the OCC contacted the appropriate district offices to determine if there was any policy requiring annual applications to extend the holding period. The OCC found that while there were no OCC policies explicitly requiring annual applications to extend the holding period, the wording of one district's policy may have inadvertently fostered an annual application practice. Based on these findings, the affected district is revising the wording of its policies to allow for a five year extension. The extension may be less than five years if the OCC has supervisory concerns. This determination will be made on a case by case basis considering factors such as: the bank's OREO policies and procedures, management expertise, and safe and sound banking principles.

One commenter requested clarification on when the holding period begins for former banking premises upon relocation to new banking quarters. The commenter suggested that the holding period for such property should begin on the date that the former banking premises is vacated by all bank personnel using the premises. The OCC agrees that clarification is needed. Consequently, the final rule states that the holding period for former banking premises begins on the date that relocation to new banking quarters is complete. The OCC will make this determination on a case-by-case basis.

Finally, one commenter was concerned that in certain instances a national bank may be precluded from selling a parcel of OREO acquired through foreclosure because of a statutorily mandated redemption period. A statutory redemption period occurs after foreclosure and is a time period during which the borrower/former owner of the OREO has the right to repurchase the property by repaying the amount owed to the bank. The commenter pointed out that prospective purchasers are unlikely to finalize a purchase of OREO if it is subject to being reclaimed by a former owner.[1] The commenter suggested that the start of the holding period be delayed during the redemption period.

As stated earlier, the holding period generally begins on the date that ownership of the property is originally transferred to a national bank. At a foreclosure sale located in a state with statutory redemption rights, a national bank acquires an ownership interest in a parcel of real estate amounting to equitable title, which is less than full, legal title. Notwithstanding, a bank's acquisition of equitable title is sufficient to classify the parcel as OREO. However, the OCC agrees with the commenter that the beginning of the holding period should be delayed during the statutory redemption period because, as a practical matter, national banks cannot dispose of OREO subject to a statutory redemption period. Therefore, the OCC amended the final rule to implement the commenter's suggestion.

C. Future Bank Expansion

The proposed rule stated that real estate acquired for future bank expansion should normally be used within three years. The proposed rule also required that prior to acquisition of real estate for future bank expansion, the bank must state, by board resolution or other official action, definite plans for its use.

Several commenters took issue with the requirement that the statement of planned use be executed prior to acquisition. These commenters preferred the original language in § 7.3025(f), which required the statement for planned use after holding future bank expansion real estate for one year. Several commenters felt that banks need sufficient time to properly formulate expansion plans. One commenter pointed out that if the statement was required within one year of acquisition, the bank's board of directors would not have to approve relatively minor acquisitions that were put to use prior to the one year date. The OCC agrees with these commenters and its final rule now requires the statement of planned use after holding future bank expansion real estate for one year.

Another commenter suggested increasing, from three years to five years, the normal time period for use of future bank expansion real estate. The commenter pointed out that section 502.1 of the Comptroller's Handbook for National Bank Examiners provides that strategic planning focuses on the long-term deployment of resources to achieve corporate goals. The commenter went on to state that the normal time frame for most strategic plans is five years. Based on this comment, the final rule now provides that real estate acquired for future bank expansion should normally be used within five years.

One commenter suggested that future bank expansion real estate should be treated differently if it is contiguous to bank premises that is currently in use. As stated earlier, the OCC understands the need for banks to plan strategically in order to achieve corporate goals. The OCC provided banks with additional flexibility in planning for the future by expanding the normal time period for use of future bank expansion real estate to five years. However, the OCC notes that it will treat all types of future bank expansion real estate the same, consistent with 12 U.S.C. 29, this final rule, and principles of safe and sound banking.

Finally, the OCC wishes to clarify the meaning of the phrase "definite plans for its use" in the context of future bank expansion. Within one year of acquiring such property, the bank must state, by board of directors resolution or other official action, definite plans for its use, for example: The property was acquired and will be used as a full service branch office. Detailed information such as architectural plans, contractor cost estimates, and site impact studies are

[1] The time period differs among states varying from two months to two years, but is usually one year. See Robert Kratovil & Raymond J. Werner, *Modern Mortgage Law and Practice* § 42.06 (1987).

not necessary for a statement of definite plans for the parcel's use.

D. Appraisals

The proposed rule required that upon transfer to OREO, a national bank must substantiate a parcel's market value by obtaining an appraisal in accordance with the OCC's general appraisal requirements or by obtaining an appropriate evaluation if an appraisal is not required. An appraisal or evaluation was not required under the proposed rule if the bank already had a valid appraisal or an appropriate evaluation on file for the parcel. The bank also was required to monitor the value of each parcel of OREO pursuant to its own prudent collateral evaluation policy.

One commenter suggested that the final rule specifically state that the threshold level[2] in the OCC's general appraisal requirements applies to OREO appraisals. The OCC believes that this clarification is helpful and stated in the final rule that the threshold level specifically applies to OREO appraisals.

Two commenters requested that the OCC clarify what amount is used to determine the transaction value for OREO appraisals. The transaction value is the amount that is used to determine if a transaction is exempt from the OCC's general appraisal requirements because it is equal to or less than the threshold level, which is discussed earlier. The OCC agrees that clarification is warranted and included a definition for transaction value in the final rule. For purposes of OREO appraisals, the transaction value is the recorded investment amount, which is defined in this regulation. The final rule defines recorded investment amount as either: the recorded loan balance, as defined by GAAP; or the net book value for former bank premises.

Another commenter asked whether a national bank was required to obtain an appraisal or evaluation when a parcel of OREO is sold. The OCC determined that a national bank is not required to obtain a new appraisal or evaluation when selling a parcel of OREO if the national bank consummated the sale based on a valid appraisal or an appropriate evaluation.

Most commenters favored the proposed change from fair value appraisals to market value appraisals. However, three commenters suggested that the use of market value could be considered less stringent than GAAP. One commenter requested that the OCC describe how its new appraisal and evaluation standards conform to GAAP and section 37 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1831n. Section 37 of the FDIA generally requires that the OCC prescribe accounting principles which are no less stringent than GAAP.

A market value appraisal conforms to GAAP because it is generally equivalent to fair value. Specifically, the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide entitled, Guide for the Use of Real Estate Appraisal Information (as of December 31, 1990), written by the AICPA, provides as follows on page one, "[t]he auditor can generally relate the definition of fair value in the accounting literature to the appraiser's definition of market value." Based on the foregoing, the OCC believes that a market value appraisal is acceptable under and conforms to GAAP.

Several commenters supported the OCC's proposal to replace its current method to monitor the value of OREO, an annual OREO reappraisal/recertification, with a prudent collateral evaluation policy. One suggested that the OCC define or provide specific guidelines on the contents of a prudent collateral evaluation policy. The commenter suggested that the policy might include some of the following: mass appraisal techniques, monitoring values by trend analysis or sampling techniques, or updating existing appraisals.

The OCC elected not to reduce a national bank's flexibility by placing specific requirements within the final rule since these techniques or practices may not be beneficial or useful for all national banks. Rather, bank management should establish a prudent collateral evaluation policy that addresses the following: the bank's specific needs, the complexity and composition of the bank's real estate loan portfolio, the bank's known or potentially troublesome real estate lending risks and prudent banking practices.

National banks should consult the following OCC documents in developing their prudent collateral evaluation policy: Banking Circular 208 (Rev.), Guidelines for Troubled Real Estate Loans (March 20, 1992); Banking Circular 225 (Rev.), Real Estate Appraisal and Evaluation Guidelines (September 28, 1992); Banking Circular 265, Interagency Guidelines for Real Estate Lending Policies (December 31, 1992); and Comptroller's Handbook for National Bank Examiners, Section 213 (Real Estate Loans), Section 214 (Real Estate Construction Loans), and Section 219 (Other Real Estate Loans).

In the final rule, the OCC replaced the phrase "prudent collateral evaluation policy" with the phrase "prudent real estate collateral evaluation policy" in order to achieve uniformity with Banking Circular 208 (Rev.). Replacing the current requirement with the prudent real estate collateral evaluation policy will give national banks flexibility in monitoring the value both of real estate collateral and OREO. The OCC's action also allows national banks to supervise their OREO property with the same policy they use to supervise classified commercial real estate loans.

Finally, the OCC shortened and clarified the exception to the general rule requiring a bank to obtain an appraisal or evaluation upon transfer of a parcel into OREO. The exception now provides that if a national bank has a valid appraisal or an appropriate evaluation on a real estate loan, which was obtained in accordance with the OCC's general appraisal requirements, then the bank is not required to obtain another appraisal or evaluation when the bank acquires ownership of the property. The bank remains subject to the continuing requirement to follow its prudent real estate collateral evaluation policy.

E. Additional Expenditures and Notification

The proposed rule stated that normal repairs and maintenance expenses for OREO shall be expensed when incurred and that notification is not required for such expenses. Several commenters pointed out that this provision may not conform to GAAP. The commenters suggested that the determination of whether an expenditure is capitalized or expensed should reflect GAAP and they suggested deleting the provision.

The OCC agrees that the capitalization/expense determination should reflect GAAP. The OCC's reason for including this provision in the proposed rule was to clarify that normal repairs and maintenance costs incurred to protect the value of the collateral do not require notification. Therefore, to prevent unnecessary filings and the associated burden on banks, the OCC retained the provision but changed it to clarify that notification is not required for normal repairs and maintenance costs incurred to protect the value of the collateral.

In the preamble to the proposed rule, the OCC stated that normal repairs and maintenance expenditures included refitting an existing building for new

[2] The current threshold level is $100,000. See 12 CFR 34.43(a)(1). However, the OCC, in conjunction with the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision, has proposed an increase in the threshold level to $250,000. See 58 FR 31878 (June 4, 1993). The threshold level adopted by the OCC in its final rule will apply to OREO appraisals.

tenants. One commenter suggested clarifying the final rule by including the re-fitting language into the regulatory text. The OCC agrees with the commenter and the language in the final rule now provides that notification is also not required for refitting an existing building for new tenants.

The proposed rule also provided that, for other real estate owned that is being developed or improved, a national bank may only make further prudent advances to complete the project if they: (1) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount; and (2) are not made for the purpose of speculation in real estate.

One commenter pointed out that the proposed rule implied that expenditures may only be made to "complete" an unfinished construction or development project. The commenter suggested permitting development activities whether or not the project has started. The commenter went on to say that the prohibition on speculation in real estate should be deleted because it was unnecessary and could be open to interpretation in light of the language limiting expenditures to those that reduce any shortfall between the parcel's market value and the bank's recorded investment amount. The commenter indicated that the prohibition on real estate speculation would lead to disagreements between lenders and examiners over what constituted speculation.

The OCC understands the commenter's concerns. As stated earlier, 12 U.S.C. 29 provides that after notification to the OCC and subject to the conditions and limitations prescribed by the OCC, banks may expend funds to develop and improve OREO if the expenditures are needed to enable the bank to recover its total investment in the property. Permitting limited expenditures allows the bank to complete an unfinished project or to preserve the current status of an OREO asset. The OCC believes limiting expenditures is prudent, reasonable and should be retained in the final rule.

The OCC believes that speculation in real estate is an unsafe and unsound banking practice, in light of long-standing case law and the statutory provisions limiting bank investment in real estate and requiring disposal of OREO within the holding period. Therefore, the condition that expenditures cannot be made for the purpose of speculation in real estate is appropriate and was retained in the final rule.

The OCC notes that the financed sale of bank assets, including OREO assets, is exempt from the national bank lending limits in 12 U.S.C. 84. Therefore, the bank may provide financing for any improvement or development project sought by the purchaser of an OREO asset, subject only to safe and sound banking principles.

One commenter suggested that unimproved land should be specifically excluded from development or improvement because these actions would be speculative in nature. The OCC agrees that in most cases the development or improvement of unimproved land is speculative. The regulatory text in the final rule prohibits speculation. In addition, a blanket prohibition would exclude the rare occurrence where development or improvement of unimproved land would be reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount and would not be speculation in real estate. Therefore, the OCC does not believe a blanket prohibition is necessary.

Finally, the proposed rule provided that a bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO that would cause the sum of the bank's recorded investment amount, and any unpaid prior liens on the property, to exceed 10 percent of the bank's capital and surplus. The OCC revised these provisions in the final rule to clarify that notification is required when the sum of the development or improvement plan's estimated cost, the bank's current recorded investment amount, and any unpaid prior liens on the property exceeds 10 percent of the bank's capital and surplus. The OCC further clarified that notification is required only once. The OCC will review plans to complete development or improvement of OREO during the examination process.

F. Treatment of Leases

The proposed rule included capitalized leases within the definition of former banking premises and subjected them to the corresponding requirements in the proposed rule. Several commenters raised the issue of treatment of leases under the proposed rule. One commenter suggested excluding operating leases from coverage, or liberalizing treatment of non-coterminous subleases of former banking premises.

The OCC believes that both capitalized and operating leases should be covered in the final rule because they both represent an interest in real estate and are covered by 12 U.S.C. 29. Therefore, the OCC clarified the definitions of both debts previously contracted real estate and former banking premises to include both capitalized and operating leases. The OCC also added a paragraph to the section on disposition of real estate to clarify the OCC's historical position that a national bank may comply with its obligation under 12 U.S.C. 29 to dispose of a capitalized or operating lease by obtaining an assignment or a coterminous sublease.

The OCC notes that use of a non-coterminous sublease is permissible. However, use of a non-coterminous sublease does not constitute disposal under 12 U.S.C. 29. Moreover, if the unexpired term of a non-coterminous sublease exceeds the permissible holding period, a violation of law occurs after the expiration of the holding period. Any remedial action for a violation will depend in part on the diligence of the bank's attempts to dispose of the lease by obtaining an assignment or a coterminous sublease and the documentation reflecting its efforts.

Another commenter pointed out that the disposition of a lease was not covered by the proposed rule because lease terminations are not covered by FAS 66 but rather by other provisions of GAAP. That commenter suggested that the OCC specifically mention that lease terminations are governed by GAAP. The proposed rule provided that the accounting treatment for OREO must be in accordance with the Instructions for the Preparation of the Consolidated Reports of Condition and Income (Call Report Instructions). The Call Report Instructions are silent with regard to lease terminations, which means that they are governed by GAAP. Therefore, the OCC believes that it is not necessary to follow the commenter's suggestion. The accounting treatment of OREO is discussed in more detail below.

G. Accounting Treatment

The proposed rule stated that sales of OREO shall be accounted for in accordance with the Call Report Instructions. Several commenters suggested that the OCC clarify how OREO transactions that meet the disposal requirements in the proposed rule will be accounted for on the Call Report.

The primary concern that the OCC sought to address in amending the OREO regulations was to provide national banks with more options to meet their statutory obligation to

dispose of OREO within the holding period in 12 U.S.C. 29. A secondary concern was to remove conflicting OREO accounting guidance from its OREO regulation and to require that OREO accounting be performed in accordance with the Call Report Instructions.

"Disposal" under this final rule is only for the purposes of 12 U.S.C. 29 and does not affect how an asset is reported in the Call Report. The accounting treatment for an OREO asset "disposed of for purposes of 12 U.S.C. 29" is found in the Call Report Instructions (Schedule RC–M), which were revised effective with the June 30, 1993 Call Report. The revision eliminated almost all exceptions to GAAP, which were previously included in the instructions to Schedule RC–M. However, in accounting for OREO and sales of it, national banks must comply with the provisions included in the Call Report Glossary entry for "Sales of Assets", including the recourse provisions.

Finally, one commenter stated that the accounting treatment language in the proposed rule could be read to cover only sales of OREO, but not how OREO is reported on the bank's books. The OCC agrees that the Call Report Instructions should govern all aspects of the accounting treatment of OREO, not just sales of OREO. Therefore, the OCC clarified the accounting treatment language in the final rule, which now provides that OREO and sales of it shall be accounted for in accordance with the Call Report Instructions.

H. Other Issues

Two commenters asked whether the final rule would be applied retroactively. The OCC believes that the final rule will apply to OREO and OREO transactions in existence on the final rule's effective date. A new section entitled "Application" is included in the final rule.

Two commenters asked about interagency consistency in the treatment of OREO. Financial institutions regulated by the Federal banking and thrift agencies are subject to different laws regarding disposal of real estate. As stated earlier, 12 U.S.C. 29 is in the National Bank Act, which covers national banks. This final rule prescribes the procedures for the proper handling and disposition of a national bank's OREO consistent with 12 U.S.C. 29.

The Federal Deposit Insurance Corporation and the Federal Reserve Board follow the Call Report Instructions and relevant state law on treatment of real estate acquired by state banks that they regulate. The Federal Reserve Board's Regulation Y prescribes the procedures and the proper handling and disposition of real estate acquired by bank holding companies. See 12 CFR 225.22(c)(1); see also 12 CFR 225.140. Finally, the Office of Thrift Supervision issued Regulatory Bulletin 30 on January 25, 1993, which provides guidance on use of the "salvage powers doctrine". The specific issues relating to a thrift's use of salvage powers to assist a service corporation and a thrift's re-evaluation of real estate owned are dealt with in two regulations, 12 CFR 563.38 and 12 CFR 563.172 respectively. The Office of Thrift Supervision does not have a regulation generally addressing the proper handling and disposition of real estate acquired by thrifts. Real estate owned by thrifts is accounted for in accordance with 12 CFR 563c.102.

Another commenter was concerned that the proposed rule did not directly address the issue of selling OREO pursuant to a land contract or a lease in which the lessee has an option to purchase the property. In both cases, the bank continues to hold legal title to the property and has a reversionary interest in the property.

The OCC believes that a sale under a "land contract" or a "contract for deed" satisfies the disposal requirements of 12 U.S.C. 29 because it is a legitimate land sales transaction. However, the OCC does not believe the same treatment should be given to leases with an option to purchase. The distinguishing feature is that at the expiration of a land contract, title to the property automatically transfers to the purchaser and the bank need not take any further action to implement the transfer. Conversely, in a lease/purchase option transaction, the bank must take steps to dispose of the property if the lessee does not exercise the option to purchase. In response to this comment, the OCC added a paragraph to the final rule stating that a bank can comply with its obligation to dispose of OREO by selling the property under a land contract or a contract for deed.

Finally, one commenter suggested that the OCC consider including all stock acquired and held in satisfaction of a debt previously contracted within the OREO holding period. The OCC considered the stock to be outside the scope of the rulemaking since stock is not covered by 12 U.S.C. 29.

15–Day Delayed Effective Date

Pursuant to 12 U.S.C. 553(d) (1) and (3), the Administrative Procedure Act, the OCC is making this final rule effective on September 17, 1993. The OCC finds that good cause exists for a 15-day delayed effective date because this final rule replaces an outdated regulation that conflicted with GAAP and contained inconsistent appraisal requirements. The final rule provides national banks with additional flexibility in disposing of OREO. It also clarifies the accounting treatment of OREO, which now must be accounted for in accordance with the Call Report Instructions. The OCC finds that a 30-day delay in the effective date of the final rule would be contrary to the public interest because the delay would preclude national banks from using the flexible disposal treatment and the clarified accounting treatment in preparing their third quarter Call Reports. A 15-day delayed effective date will increase credit availability by allowing national banks to shift resources from administering OREO into providing credit to creditworthy borrowers. Finally, this final rule is a substantive rule that grants a limited exception to the appraisal requirement. See 12 CFR 34.84(b).

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce burden on national banks, regardless of size, by clarifying existing statutory and regulatory requirements.

Executive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis. The impact of this final rule is expected to be slight and will benefit banks by clarifying existing regulations.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557–0153.

The estimated annual burden per respondent for the application in § 34.82(a) varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated annual burden per respondent for the notification in § 34.85(b) varies from 1 to 8 hours, depending on individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of these burden estimates and suggestions

for reducing burden should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0153, 250 E Street, SW., Washington, DC 20219, and the Office of Management and Budget, Paperwork Reduction Project (1557–0153), Washington, DC 20503.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, parts 7 and 34 of chapter I of title 12 of the Code of Federal Regulations are amended as set forth below:

PART 7—INTERPRETIVE RULINGS

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

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 7.3020 [Removed]

2. Section 7.3020 is removed.

§ 7.3025 [Removed]

3. Section 7.3025 is removed.

PART 34—REAL ESTATE LENDING AND APPRAISALS

4. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

5. A new Subpart E—Other Real Estate Owned is added to part 34 to read as follows:

Subpart E—Other Real Estate Owned

Sec.
34.81 Definitions.
34.82 Holding period.
34.83 Disposition of real estate.
34.84 Appraisal requirements.
34.85 Additional expenditures and notification.
34.86 Accounting treatment.
34.87 Application.

Subpart E—Other Real Estate Owned

§ 34.81 Definitions.

(a) *Other real estate owned* is:

(1) Covered transactions real estate;

(2) Debts previously contracted real estate; and

(3) Former banking premises.

(b) *Covered transactions real estate* is a parcel of debts previously contracted real estate or former banking premises that the national bank is in the process of disposing of in accordance with § 34.83(a)(6).

(c) *Debts previously contracted real estate* means real estate (including capitalized and operating leases) acquired by a national bank through any means in full or partial satisfaction of a debt or debts previously contracted.

(d) *Former banking premises* means real estate (including capitalized and operating leases) for which banking use is no longer contemplated. This includes real estate originally acquired for future expansion that will no longer be used for future expansion or other banking purposes.

(e) *Market value* is determined in accordance with subpart C of this part.

(f) *Recorded investment amount* means:

(1) The recorded loan balance, as defined by generally accepted accounting principles; or

(2) Net book value for former banking premises.

(g) *Transaction value* means the recorded investment amount.

§ 34.82 Holding period.

(a) *Holding period for other real estate owned.* Pursuant to 12 U.S.C. 29, a national bank may hold other real estate owned for a period not to exceed five years, except that the Comptroller may approve an application by the bank to extend the holding period for up to an additional five years, if:

(1) The bank has made a good faith attempt to dispose of the other real estate owned within the five-year period; or

(2) Disposal of the other real estate owned within the five-year period would be detrimental to the bank.

(b) *When the holding period begins.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank;

(2) Relocation from former banking premises to new banking premises is complete; or

(3) A decision is made not to use real estate acquired for future bank expansion.

(c) *Effect of statutory redemption period on the beginning of the holding period.* For debts previously contracted real estate that is subject to a redemption period imposed under state law, the holding period begins at the expiration of the redemption period.

§ 34.83 Disposition of real estate.

(a) *Disposal.* Other real estate owned shall be disposed of within the holding period permitted by 12 U.S.C. 29 at any time that prudent judgment dictates, but in no event later than the end of such holding period.

(1) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned by entering into a transaction that is accorded sales treatment under generally accepted accounting principles.

(2) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned by entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a federally sponsored instrumentality that purchases loans.

(3) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned by selling the property pursuant to a land contract or a contract for deed.

(4) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of debts previously contracted real estate by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate.

(5) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of a capitalized or operating lease by obtaining an assignment or a coterminous sublease.

(6) A national bank that enters into a transaction that does not qualify for disposal under paragraphs (a) (1) through (5) of this section may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned when it receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10 percent of the sales price, as measured in accordance with generally accepted accounting principles.

(b) *Disposal efforts and documentation.* The national bank shall make diligent efforts to dispose of each parcel of other real estate owned and shall maintain documentation adequate to reflect those efforts.

(c) *Future bank expansion.* Real estate acquired for future bank expansion should normally be used within five years. After holding such real estate for one year, the bank shall state, by board of directors resolution or other official action, definite plans for its use. The resolution or other official action shall be available for inspection by national bank examiners.

§ 34.84 Appraisal requirements.

(a) *In general.* (1) Upon transfer to other real estate owned, the national bank shall substantiate the parcel's market value by obtaining either:

(i) An appraisal in accordance with subpart C of this part; or

(ii) An appropriate evaluation when the transaction value is equal to or less than the threshold amount in subpart C of this part.

(2) The national bank shall develop a prudent real estate collateral evaluation policy that allows the bank to monitor the value of each parcel of other real estate owned in a manner consistent with prudent banking practice.

(b) *Exception.* If a national bank has a valid appraisal or an appropriate evaluation on a real estate loan, which was obtained in accordance with subpart C of this part, then the bank is not required to obtain another appraisal or evaluation when the bank acquires ownership of the property. However, the bank shall continue to follow the prudent real estate collateral evaluation policy required in paragraph (a)(2) of this section.

(c) *Sales of other real estate owned.* A national bank is not required to obtain a new appraisal or evaluation when selling other real estate owned if the sale was consummated based on a valid appraisal or an appropriate evaluation.

§ 34.85 Additional expenditures and notification.

(a) *Additional expenditures on other real estate owned.* (1) Notification under paragraph (b)(1) of this section is not required for re-fitting an existing building for new tenants or for normal repairs and maintenance costs incurred to protect the value of the collateral.

(2) For other real estate owned that is a development or improvement project, a national bank may make prudent advances to complete the project if they:

(i) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount; and

(ii) Are not made for the purpose of speculation in real estate.

(b) *Notification procedures.* (1) A national bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for other real estate owned when the sum of the plan's estimated cost, the bank's current recorded investment amount, and any unpaid prior liens on the property, exceeds 10 percent of the bank's capital and surplus, as defined in § 3.100 of this title. Notification under this paragraph is required only once.

(2) The required notification must include any documentation necessary to demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraphs (a)(2)(i) and (ii) of this section.

(3) If the appropriate supervisory office imposes no additional conditions or limitations on the national bank's plan within 30 days following receipt of the bank's notification by the OCC, then on the thirty-first day following receipt of the bank's notification by the OCC (or sooner if notified by the OCC), the bank may implement the plan to develop or improve the other real estate owned.

§ 34.86 Accounting treatment.

Other real estate owned and sales of it shall be accounted for in accordance with the Instructions for the preparation of the Consolidated Reports of Condition and Income.

§ 34.87 Application.

The provisions of this subpart are applicable to all other real estate owned, including other real estate owned in existence on September 17, 1993.

Dated: August 30, 1993.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 93–21415 Filed 9–1–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–87; Special Conditions No. 25–ANM–75]

Special Conditions: Modified Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes modified by Comtran International, Inc. of San Antonio, Texas. The modification includes the installation of high-technology digital avionics systems or other electronic systems that perform critical or essential functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: The effective date of these special conditions is August 17, 1993. Comments must be received on or before October 18, 1993.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief, Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–87, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked; Docket No. NM–87. Comments may be inspected in the Rule Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2148.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comment received. All comments submitted will be available in the Rule Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–87." The postcard will be date stamped, and returned to the commenter.

Background

On April 13, 1993, Comtran International, Inc., 1770 Sky Place Blvd., San Antonio, Texas, 78216, applied for a supplemental type certificate to modify Boeing Model 727–100 series airplanes. The proposed modification includes the installation of digital avionics, including an electronic flight instrument system (EFIS) and an engine indication and crew alerting system (EICAS), which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. Other similar modifications often installed when updating to digital avionics include attitude and heading reference systems (AHRS). Because these are typical modernization modifications for retrofitting state-of-the-art avionics and electronics to older airplanes, it is expected that Comtran International, Inc. will apply for supplemental type certificates for installation of similar modifications on Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes in the near future. Therefore, Comtran International, Inc. will need appropriate lightning and HIRF criteria available for application to those projects.

Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes are all listed on Type Certificate A3WE. The airplanes are pressurized, 199 to 189 passenger (depending on the specific model and airplane configuration), large commercial transport type airplanes having a maximum operating altitude of 42,000 feet. The airplanes are powered by three aft fuselage-mounted turbojet or turbofan engines, depending on the specific model and airplane configuration.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Comtran International, Inc. must show that the modified Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A3We include the following: CAR 4b dated December 31, 1953, including Amendments 4b–1 thru 4b–11, and Special CAR SR–422B. In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. These special conditions will form an additional part of the type certification basis when critical or essential digital avionics/electronic systems are being modified or installed.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b or part 25, as amended) do not contain adequate or appropriate safety standards for Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new-technology avionics and electronic systems. There are two regulations that specially pertain to lightning protection: 1 for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes that would require that new technology electrical and electronic systems, such as electronic flight instrument systems, electronic engine indication and crew alerting systems, digital avionics systems, and electronic propulsion controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the lightning special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular (AC) 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment which has been changed to agree with the latest recommendations from the SAE AE4L Committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. When a single event upset of input/output signals may not

affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds; the maximum is 1000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between subsequent bursts is 300ms, and (2) the maximum period between subsequent bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_0 (e^{-at} - e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=218,810	109,405	54,703	10,572
a, sec^{-1}	=11,354	22,708	22,708	187,191
b, sec^{-1}	=647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
i_{peak}	=200 KA	100 KA	50 KA	10 KA
and,				
$(di/dt)_{max}$(amp/sec)	=1.4 × 10^{11} @t = 0+sec	1.4 × 10^{11} @t = 0+sec	0.7 × 10^{11} @t = 0+sec	2.0 × 10^{11} @t = 0+sec
di/dt, (amp/sec)	= 1.0 × 10^{11} @t = .5μs	1.0 × 10^{11} @t = .25μs	0.5 × 10^{11} @t = .25μs	.....
Action Integral (amp^2 sec)	2.0 × 10^6	0.25 × 10^6	0.625 × 10^6	.....

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Futhermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes. It is not a rule of general applicability and affects only Comtran International, Inc., when they apply to the FAA for approval of modifications involving these features on Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes modified by Comtran International, Inc. of San Antonio, Texas.

1. *Lightning Protection.* a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 17, 1993.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–21392 Filed 9–1–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–14]

Alteration of VOR Federal Airways and Jet Routes and Establishment of the Sidon Reporting Point; MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Greenwood, MS, very high frequency omnidirectional range/tactical air navigation (VORTAC) to the Sidon, MS, VORTAC. The Greenwood, MS, VORTAC is located approximately 10 miles west of the Greenwood-Leflore Airport. The FAA has determined that its current name is misleading because confusion exists between Greenwood, MS, and Greenville, MS, which are located adjacent to each other. Also, to avoid pilot confusion, navigational aids (NAVAID) not located on the airport surface should not have the same name as the primary airport. This action reflects the name change, where necessary, in all airway and jet routes that have Greenwood in their text.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On February 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the name change of the Greenwood, MS, VORTAC to the Itta Bena, MS, VORTAC (58 FR 8724).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the FAA has now decided to rename the NAVAID "Sidon" in lieu of "Itta Bena," which is the name of a nearby community. The high altitude reporting points and the Greenwood, MS, low altitude reporting point referred to in the original proposal have been deleted from this final rule because the new airspace reclassification rule which becomes effective September 16, 1993, will delete all domestic high altitude reporting points and a number of low altitude reporting points. Except for editorial changes and the renaming of the NAVAID from "Itta Bena" to "Sidon," this amendment is the same as that proposed in the notice. Jet routes, domestic VOR Federal airways, and low altitude reporting points are published in paragraphs 2004, 6010(a), and 7001, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet routes, domestic VOR Federal airways, and low altitude reporting point listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations reflects the name change of the Greenwood VORTAC to the Sidon VORTAC. The Greenwood, MS, VORTAC is located approximately 10 miles west of the Greenwood-Laflore Airport. This name change will end the confusion that currently exists between Greenwood,

MS, and Greenville, MS, which are located adjacent to the other.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

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J–35 [Revised]

From New Orleans, LA, via McComb, MS; Sidon, MS; Memphis, TN; Farmington, MO; St. Louis, MO; Capital, IL; Pontiac, IL; Joliet, IL; to Northbrook, IL.

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J–52 [Revised]

From Vancouver, BC, Canada, via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Denver, CO; Kiowa, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Dallas-Fort Worth, TX; Texarkana, AR; Sidon, MS; Bigbee, MS; Vulcan, AL; Atlanta, GA; Colliers, SC; Columbia, SC; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

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Paragraph 6010(a)—Domestic VOR Federal Airways

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V–9 [Revised]

From Leeville, LA, via INT Leeville, 333° and New Orleans, LA, 181° radials; New Orleans; McComb, MS; Jackson, MS; Sidon, MS; Gilmore, AR; Malden, MO; Farmington, MO; St. Louis, MO; Capital, IL; Pontiac, IL; INT Pontiac 343° and Rockford, IL, 169° radials; Rockford; Janesville, WI; Madison, WI: Oshkosh, WI; Green Bay, WI; Iron Mountain, MI; to Houghton, MI.

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V–11 [Revised]

From Brookley, AL; Greene County, MS; Jackson, MS; Sidon, MS; Holly Springs, MS; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Indianapolis, IN; Marion, IN; Fort Wayne, IN; to INT Fort Wayne 038° and Carleton, MI, 262° radials.

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V–278 [Revised]

From Texico, NM, via Plainview, TX; Guthrie, TX; Bridgeport, TX; Blue Ridge, TX; Paris, TX; Texarkana, AR; Monticello, AR; Greenville, MS; Sidon, MS; Bigbee, MS; to Vulcan, AL.

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V–535 [Revised]

From Sidon, MS; INT Sidon 010° and Holly Springs, MS, 225° radials; Holly Springs.

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V–555 [Revised]

From New Orleans, LA, via Picayune, MS; McComb, MS; INT McComb 019° and Jackson, MS, 169° radials; Jackson; INT Jackson 010° and Sidon, MS, 159° radials; to Sidon.

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V–557 [Revised]

From McComb, MS, via INT McComb 348° and Jackson, MS, 199° radials; Jackson, INT Jackson 340° and Sidon, MS, 189° radials; to Sidon.

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Paragraph 7001—Domestic Low Altitude Reporting Points

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Sidon, MS [New]

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Issued in Washington, DC, on August 27, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–21391 Filed 9–1–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule; amendment.

SUMMARY: Consistent with United Nations Security Council Resolution 861 of August 27, 1993, and the August 27, 1993 announcement of the Secretary General of the Organization of American States, the Treasury Department is amending the Haitian Transactions Regulations to suspend U.S. sanctions against Haiti. The rule prospectively suspends trade restrictions against Haiti and authorizes new financial and other transactions with the Government of Haiti. It does not unblock property of the Government of Haiti that was blocked on or before August 31, 1993 at 9:35 a.m., e.d.t., nor does it affect enforcement actions involving prior violations of the Regulations. Blocked property of the Government of Haiti will be unblocked by specific license on a case-by-case basis. However, all blocked property of the Banque de l'Union Haitienne, and of all individuals previously listed in Appendix A to the Regulations, is unblocked.

EFFECTIVE DATE: August 31, 1993 at 9:35 a.m.. e.d.t.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Programming (tel: 202/622–2500), Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Haitian Transactions Regulations, 31 CFR Part 580 (the "Regulations"), were issued by the Treasury Department to implement Executive Order Nos. 12775 (56 FR 50641, October 7, 1991) and 12779 (56 FR 55975, October 30, 1991), declaring a national emergency with respect to Haiti under the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the *de facto* regime in Haiti.

Consistent with United Nations Security Council Resolution 861 of August 27, 1993, and the August 27, 1993 announcement of the Secretary General of the Organization of American States, the Office of Foreign Assets Control ("FAC") is amending the Regulations to add § 580.518,

authorizing trade transactions with Haiti and transactions involving property in which the Government of Haiti has an interest, where those transactions arise after August 31, 1993. The effect of this amendment is that transactions involving property interests of the Government of Haiti that come within the United States or into the possession or control of United States persons after August 31, 1993, or in which an interest of the Government of Haiti arises thereafter, are no longer prohibited. Newly authorized transactions include, but are not limited to, otherwise lawful exportations to and importations from Haiti, brokering transactions, and transfers of funds to the Government of Haiti for obligations due and payable after August 31, 1993.

Section 580.518 further provides that property of the Government of Haiti blocked as of August 31, 1993, remains blocked. Such property will be unblocked by specific license on a case-by-case basis. All previously blocked property of the following, however, is unblocked: (1) All individuals previously listed in Section I of Appendix A to Part 580; and (2) Banque de L'Union Haitienne, S.A.

Treasury is also amending Appendix A to this part to remove all individuals and one private entity from the list of blocked persons of the *de facto* regime in Haiti.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 580

Blocking of assets, Exports, Haiti, Imports, Specially designated nationals, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as set forth below:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; E.O. 12775, 56 FR 50641, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 56 FR 55975, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843, July 2, 1993.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 580.518 is added to subpart E to read as follows:

§ 580.518 Authorization of new transactions; suspension of certain prohibitions.

(a) Except as provided in paragraph (b) of this section, the prohibitions contained in §§ 580.201, 580.202, 580.204, 580.205, 580.206, 580.208, and 580.211 do not apply to any transaction occurring after August 31, 1993 at 9:35 a.m., e.d.t.

(b) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property of the Government of Haiti that were blocked on or before August 31, 1993 at 9:35 a.m., e.d.t., remain blocked.

(c) All property and interests in property of the following are unblocked:

(1) All individuals previously listed in Section I of Appendix A to this part — "Blocked Individuals of the De Facto Regime in Haiti"; and

(2) Banque de l'Union Haitienne, S.A.

Appendix A to Part 580—Blocked Persons of the De Facto Regime in Haiti

3. Section I of Appendix A to Part 580—"Blocked Individuals of the De Facto Regime in Haiti"—is removed and reserved.

4. Section II of Appendix A to Part 580—"Blocked Entities of the De Facto Regime in Haiti"—is amended to remove the entry "Banque de l'Union Haitienne, S.A. (a.k.a. BUH), Angle rues Du Quae et Bonne Foi, Boite Postale 275, Port-au-Prince, Haiti."

Dated: August 30, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 30, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–21536 Filed 8–31–93; 9:35 am]

BILLING CODE 4810–25–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN25–1–5726; FRL–4703–3]

Approval and Promulgation of a Small Business Assistance Program; Indiana

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: The U.S. EPA approves the requested State Implementation Plan (SIP) revision submitted by the State of Indiana for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Act. The rationale for the approval is set forth in this notice; additional information is available at the address indicated below.

EFFECTIVE DATE: This action will be effective November 1, 1993 unless notice is received within 30 days that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments can be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, AR–18J, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of the State's submittal and U.S. EPA's technical support document are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Act, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the Act requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the Act directs the U.S. EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements

for establishing a Program are set out in section 507 of Title V of the Act. In January 1992, U.S. EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Indiana has submitted a requested SIP revision to U.S. EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following Program elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

Indiana has met all of the requirements of section 507 by submitting a SIP revision that implements all required Program elements.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by establishing outreach methods in the Air Quality Small Business Assistance Program (AQSBAP). The State will use existing small business groups (i.e., trade associations, economic development groups) to disseminate information through their newsletters, publications, and/or regularly scheduled conferences. Also, the State will use a toll-free information clearinghouse telephone number operated by the AQSBAP to serve as an easy access point for businesses to obtain information.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by making assistance available on these subjects through the Indiana Department of Environmental Management (IDEM) Office of Pollution Prevention and Technical Assistance.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by providing the following advice and assistance through the AQSBAP telephone hotline: Identification of applicable rules, determination whether a permit is needed, identification of available methods for achieving compliance, and explanation of the permitting procedures.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by having the Ombudsman develop a fact sheet that notifies small businesses of their rights under the Act and explains their legal recourse should they be notified of a violation. The Ombudsman will also develop fact sheets notifying small businesses of those proposed and final rules issued under the Act that affect their businesses.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by having the Ombudsman develop and distribute a list of consultants that can provide audits to identify the State and Federal air quality requirements a source is subject to and to recommend methods of achieving compliance. This list will be updated annually. The Ombudsman will also develop a fact sheet that provides information useful in selecting a consultant.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by authorizing under Indiana law (IC 13–7–7–6) that any person affected by any rule adopted by a board, who believes that the imposition of the rule would impose an undue hardship or burden on the person, may apply to the IDEM Commissioner for a variance from the rule. The AQSBAP will prepare information for eligible small businesses as to the availability of such procedures and provide guidance in submitting such requests.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing the Ombudsman in the Office of Business Relations within IDEM. Some of the staff is already on board; additional staff has been authorized to provide initial resources for the Ombudsman. These positions are planned to be operational by November 1993. The Ombudsman will act as a liaison between small businesses and the staff of IDEM. The Ombudsman will have direct access to the staff of the Governor's Office, the existing Ombudsman staff in the Indiana Department of Commerce, the Commissioner of IDEM, and the IDEM Office of Air Management staff.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by authorizing the Governor to select 2 members to represent the general public, the State House of Representatives and State Senate to select 2 members each to represent small businesses, and the Commissioner of IDEM to select one

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

member to represent the agency responsible for issuing air pollution control operating permits.

In addition to establishing the minimum membership of the CAP, the Act delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to U.S. EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by including these responsibilities in the duties of the CAP.

4. Eligibility

Section 507(c)(1) of the Act defines the term "small business stationary source" as a stationary source that:

(A) is owned or operated by a person who employs 100 or fewer individuals,

(B) is a small business concern as defined in the Small Business Act;

(C) is not a major stationary source;

(D) does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) emits less than 75 tpy of all regulated pollutants.

The State of Indiana has established a mechanism for ascertaining the eligibility of a source to receive assistance under the Program, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the Act. The State will make all Program services (i.e., hosting conferences, voluntary audits) available only to businesses that meet all the above criteria. Less time-consuming services (i.e., telephone consultations, mailing of literature) will be available to businesses that meet at least the first criteria listed above. The State will distribute public information brochures that explain what businesses are eligible for the Program. Also, Program staff will develop and keep current a list of businesses that do not meet the eligibility definition in section 507 of the Act.

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, U.S. EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

The State of Indiana has not provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the Act but do not emit more than 100 tpy of all regulated pollutants. This provision is an option the State may adopt as part of its Program. It is not required for program approval.

The State of Indiana has not provided for exclusion from the small business stationary source definition, after consultation with the U.S. EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the Act. This provision is an option the State may adopt as part of its Program. This approach meets U.S. EPA requirements because it does not limit program participation by small businesses.

III. Final Rulemaking

Because the requested Indiana Program SIP revision meets the Act requirements discussed above, U.S. EPA is approving the SIP revision submitted by the State of Indiana.

The State of Indiana has submitted a SIP revision implementing each of the required Program elements required by section 507 of the Act. The Small Business Assistance Program staff is scheduled to be hired in January 1994. The Ombudsman is to be appointed in August 1993 and the Ombudsman staff hired in October 1993. The CAP is to be appointed in October 1993 and the CAP is to begin operation in January 1994. The draft final Program description is to be submitted to U.S. EPA in January 1994 and the final Program is to be submitted in March 1994. U.S. EPA is, therefore, approving this submittal.

Because U.S. EPA considers this action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 1, 1993. However, if we receive notice by October 4, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirement of Section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this rule, U.S. EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State.

Therefore, because U.S. EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Small business assistance program.

Dated: August 20, 1993.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.798 is added to read as follows:

§ 52.798 Small business stationary source technical and environmental compliance assistance program.

The Indiana program submitted on January 14, 1993, as a requested revision to the Indiana State Implementation Plan satisfies the requirements of section 507 of the Clean Air Act Amendments of 1990.

[FR Doc. 93–21363 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 228

[FRL 4701–1]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA designates an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Fort Pierce, Florida, as an EPA-approved ocean dumping site for the dumping of suitable dredged material. This action is necessary to provide an acceptable ocean dumping site for consideration as a disposal option for dredged material disposal projects in the Fort Pierce, Florida vicinity. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on October 4, 1993.

ADDRESSES: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street, SW., Washington, DC 20460.

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Department of the Army, Jacksonville District Corps of Engineers, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Christopher J. McArthur, 404/347–1740.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the sites are located. This designation of a site offshore Fort Pierce, Florida, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing Fort Pierce site as an interim site.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build careful consideration of all environmental aspects of rulemakings into the agency decision-making process. EPA has committed to prepare EISs in connection with ocean disposal site designations such as this.

EPA, in cooperation with the Jacksonville District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS entitled "Final Environmental Impact Statement for Designation of a Fort Pierce, Florida Ocean Dredged Material Disposal Site." This Final Rule may include excerpts from the EIS. Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on this EIS will close on September 13, 1993.

The action discussed in the EIS is the permanent designation of an ocean dredged material disposal site near Fort Pierce, Florida. The purpose of the action is to provide an environmentally acceptable location for ocean disposal.

The need for the permanent designation of the Fort Pierce ODMDS is based on a continuing U.S. Army Corps of Engineers need for ocean disposal of maintenance dredged material from the Fort Pierce area. The need for ocean disposal will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Fort Pierce Harbor ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220–229) and the COE regulations (33 CFR 209.120 and 209.145).

The COE also issues MPRSA permits to private applicants for the transport of dredged material intended for disposal after compliance with these regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgement, all provisions of MPRSA and the associated implementing regulations have not been met.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the final action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of the MPRSA, the Ocean Dumping Regulations, and other applicable federal environmental legislation.

EPA has evaluated the site designation for consistency with the State of Florida's (the State) approved coastal management program. EPA has determined that the designation of the site is consistent to the maximum extent practicable with the State coastal management program, and has submitted this determination to the State for review in accordance with EPA policy. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the site on the State coastal zone. EPA concurs with the state of Florida regarding the use of suitable material for beach nourishment, in circumstances where this use is practical and environmentally sound.

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) has been asked by EPA to concur with EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. The NMFS in a letter dated March 3, 1993 concurred with the determination that populations of endangered or threatened species under their purview would not be adversely affected by the action.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On March 5, 1993, EPA proposed designation of this site to provide an acceptable ocean dumping site for consideration as a disposal option for dredged material disposal projects in the Fort Pierce, Florida vicinity. The public comment period on this proposed action closed on April 5, 1993. No comments were received on the proposed rule.

The site is located east of Fort Pierce Harbor, Florida, approximately 4 nautical miles (nmi) offshore and occupies an area of about 1 square nautical mile (nmi^2), approximately 1 nmi by 1 nmi. Water depths within the area range from 40 to 54 feet. The coordinates of the Fort Pierce site are as follows:

27°28′00″N 80°12′33″W;
27°28′00″N 80°11′27″W;
27°27′00″N 80°11′27″W; and
27°27′00″N 80°12′33″W.

Center coordinates are 27°27′30″N and 80°12′00″W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists the 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The site, as discussed below under the eleven specific factors, is accpetable under the five general criteria except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Final EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that stated in this action. Historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the site are reviewed below in terms of these 11 factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary and center coordinates of the site are given above. The site is located about 4 nmi offshore of Fort Pierce Harbor, Florida. The site is approximately a 1 nmi by 1 nmi square configuration. Water depth in the area ranges from 40 to 54 feet.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The Fort Pierce ODMDS is located in general proximity to breeding, spawning, nursery, feeding, and passage areas for a wide variety of marine and estuarine organisms. The most active breeding and nursery areas are located in the Indian River estuary and along adjacent beaches or in offshore waters and reef areas. While breeding, spawning, and feeding activities may take place in the ODMDS, these activities are not believed to be confined to, concentrated in, or dependent on this area. Specific migration routes are not known in the Fort Pierce area. While marine and estuarine species would be expected to pass through the ODMDS, passage is not geographically restricted to this area. The motility of organisms passing through the area makes significant impacts from dredged material disposal unlikely.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

Beaches and adjacent nearshore areas approximately 4 nmi west of the ODMDS support a wide variety of recreational activities. Several protected areas lie inshore west of the ODMDS. The largest of these is the Indian River Aquatic Preserve that encompasses almost all inshore waters between the barrier islands and the west Florida mainland. Other protected areas in the Fort Pierce ODMDS vicinity include the North Fork St. Lucie Aquatic Preserve, the Savannas State Preserve, Pepper Beach State Park, and Fort Pierce Inlet State Park. The Florida Department of Environmental Regulation (FDER) has given the waters of these areas special protection by designating them as Outstanding Florida Waters (OFWs). Past surveys indicated one natural reef and one artificial reef site are located in the Fort Pierce ODMDS vicinity. The natural reef area is located approximately 1.3 nmi due east of the disposal site and has been described by Florida Sea Grant (1979) as a flat bottom with heavy coral growth. The artificial reef site has been established approximately 1.5 nmi southeast of the ODMDS. More recent investigations have revealed the presence of hard bottom communities in the northern portion of the interim site resulting in a shift in location of the site to 0.5 miles to the south. Model studies indicates that it is unlikely that any significant amount of disposed material would be transported as far as these sites from the disposal area.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))

It is anticipated that the site will be used primarily for disposal of maintenance material from the Fort Pierce Harbor entrance channel and turning basin. Sediments of the entrance channel are predominantly sand, while those of the turning basin are finer sands, shell and silt. Annual volumes have averaged 21,000 cubic yards. Annual volumes are expected to increase to a maximum of approximately 117,000 cy. Each disposal plan must be evaluated on a case-by-case basis to ensure that ocean disposal is the best alternative and that the material meets the Ocean Dumping Criteria in 40 CFR part 227.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The geographic and physical setting of the candidate site poses no special problems for monitoring or surveillance. Water depth at the site is amenable to diver collection or surface sampling and does not require use of a large, specialized surface vessel. The areal extent of the site allows use of towed trawls for bottom and water column sampling. Baseline data collected at the site can serve as reference information for future monitoring and aid in assessing possible perturbations resulting from disposal at the site. A detailed Site Management and Monitoring Plan (SMMP) was developed for the Fort Pierce ODMDS. A copy of the SMMP can be found in the EIS. This plan establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. These surveys can include bathymetry, sediment tracking, benthic faunal analyses, video and side scan sonar surveys.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Currents in the area are mainly wind driven. Net current flow is alongshore with the direction of movement related to season. In 1989, the Army Corps of Engineers Waterways Experiment Station (WES) performed a technical study of the Gulf Stream meanders, spin-off eddies and prevailing tides and currents off the east coast of Florida with respect to the potential for contamination of nearshore amenities by dredged material placed in the Fort Pierce ODMDS. A numerical modeling approach was used for estimating both short-term and long-term rate of dredged material dispersal at the ODMDS. The modeling of the short-term dumping operation was performed using the disposal from an Instantaneous Dump (DIFID) model. Long-term simulations were conducted to determine whether non-storm related currents are capable of transporting sediments outside of the ODMDS over long periods of time. The effects of storm erosion were separately modeled by simulating the passage of a storm surge over the site. Current velocities used were estimated. The results of the study indicate that the Fort Pierce ODMDS poses no threat to reef areas.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Dredged materials have been disposed at the Fort Pierce Harbor interim ODMDS since 1949. An environmental survey of the Fort Pierce Harbor ODMDS was conducted in December 1985. This survey detected no consistent differences in water quality, sediment quality, or sediment composition between the ODMDS and nearby areas. Potential disposal-induced changes in benthic macro-invertebrate community structure were localized within the ODMDS and did not extend beyond ODMDS boundaries. Prior disposals at the ODMDS have resulted in minor localized changes in the community structure of the area. Deposit feeding macroinfauna are dominant at the disposal site while suspension feeding macroinfauna are dominant in the surrounding area. This may be due to higher organic content in the discharged materials. If this is the case, it would be an indication of the high level of stability of the discharged materials since the last disposal took place in May 1983. There are no differences in the abundance or diversity of the meiofauna of the disposal area, although nematode:harpacticoid ratios are highest within the disposal area, which may be a further indication of the higher organic content of the discharged materials. No differences in epibenthic invertebrate, fish, or plankton populations are evident. It is expected that any further discharge at the site would not significantly change these conditions.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The Fort Pierce Harbor ODMDS is located about 2.5 nmi outside the seaward extent of the Fort Pierce Inlet entrance channel. Use of this site to date has not interfered with shipping and continued intermittent use of the site should not disrupt either commercial shipping or recreational boating.

Most commercial and recreational fishing activity is concentrated in inshore and nearshore waters or at offshore natural or artificial reefs. The nearest natural reef is located 1.3 nmi east of the disposal site (Florida Sea Grant, 1979). Because of the north-south orientation of the prevailing currents, no adverse impacts to this reef area have occurred from dredged material disposal operations. An artificial reef area has recently been established approximately 1.5 nmi southeast of the ODMDS.

No mineral extraction, desalination, or mariculture activities occur in the immediate area. Recreational and scientific resources are extensive throughout the area but are not geographically limited to the disposal site or nearby waters.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Water quality at the ODMDS is variable and influenced both by discharges from inshore estuarine systems and by periodic oceanic intrusions. Estuarine discharges are greatest during the wet season, from late summer to early fall, and may deliver both nutrients and anthropogenic contaminants to coastal waters. Nutrients may also be introduced to shelf waters by upwellings (Worth and Hollinger, 1977). Surface and bottom waters sampled in the ODMDS vicinity in December 1985 did not contain measurable concentrations of selected trace metals, pesticides, hydrocarbons, or PCBs.

Benthic communities in the ODMDS vicinity have been described from a survey conducted in December 1985 and 1992. Nematodes, copepoda crustaceans, and larval polychaetes are the most abundant representatives of the meifaunal community. The area's diverse benthic macroinvertebrate fauna are dominated by carnivorous polychaete worms of the family Syllidae. Other abundant macroinfaunal groups included nematodes, oligochaete worms, molluscs, amphipod crustaceans and turbellarians.

Epibenthic invertebrates characteristics of the disposal site vicinity include the crabs *Portunus gibbesi* and *Portunus spinimanus*, the shrimp, *Trachypenaeus constrictus*, the sea urchin, *Lytechinus variegatus*, starfish and brittle stars (Camp el al, 1977).

The demersal fish fauna of the area are not abundant (Futch and Dwinell, 1977). Fish characteristic of the sandy offshore ODMDS environment include leopard sea robin (*Prionotus scitulus*), sand perch (*Diplectrum formosum*), and lizardfish (*Synodus foetens*).

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The Fort Pierce Harbor ODMDS has been utilized since 1949. To date, no nuisance species have been reported from the interim ODMDS or nearby previously utilized disposal sites. The potential for the development or recruitment of nuisance species at this site is considered quite low. A December 1985 survey of the ODMDS vicinity yielded no evidence of undesirable organisms.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

It is unlikely that significant natural or cultural features of historical importance exist at the disposal site. In the unlikely event that historical features are present on site, they will have been covered with sand and would be further covered by continued disposal operations.

E. Site Management

Site management of the Fort Pierce ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region IV assumes overall responsibility for site management.

A Site Management and Monitoring Plan (SMMP) was developed as a part of the process of completing the EIS. This plan will be revised and maintained as a living document by a Site Monitoring and Management Team consisting of representatives of EPA, COE, other federal agencies, and state agencies. This plan provides a framework for both site management and for the monitoring of effects of disposal activities. Site management may include strategically locating and/or orienting dredged material within the site boundaries relative to predominant current patterns. Monitoring could involve sediment mapping of disposed material to determine any movement of material off of the site. Determination of the significance of any biological impacts of dredged material outside the ODMDS boundaries would then be appropriate. The SMMP can be found in Appendix D of the EIS.

F. Action

The EIS concludes that the site may appropriately by designated for use. The site is compatible with the general criteria used for site evaluation.

The designation of the Fort Pierce site as an EPA-approved ODMDS is being published as final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA reviews and has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

The Fort Pierce ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the Fort Pierce Harbor, Florida vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Rule does not contain any information collection requirements subject to Office Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: July 30, 1993.

Approved by:

Patrick M. Tobin,

Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the dredged material disposal site "Fort Pierce Harbor" and adding paragraph (b)(93) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(93) Fort Pierce Harbor; Fort Pierce, Florida; Ocean Dredged Material Disposal Site _____Region IV.

Location:

27°28′30″N	80°12′33″W;
27°28′30″N	80°11′27″W;
27°27′30″N	80°11′27″W; and
27°27′30″N	80°12′33″W.

Size: 1 square nautical miles.

Depth: Average range 40 to 54 feet.

Primary use: Dredged material.

Period of use: Continuing use.

Restrictions: Disposal shall be limited to suitable dredged material from the greater Fort Pierce, Florida vicinity. All dredged material consisting of greater than 10% fine grained material (grain size of less than 0.074mm) by weight shall be limited to that part of the site east of 80°12′00″W and south of 27°27′20″N.

[FR Doc. 93–21255 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 22, and 94

[ET Docket No. 92–9; FCC 93–351]

Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Report and Order the Commission adopts Rules to complete a regulatory framework for relocating fixed microwave operations where necessary to implement services using emerging technologies in the 2 GHz bands. This action is necessary to provide 2 GHz spectrum for future wireless communications services while preventing disruption to incumbent 2 GHz fixed microwave licensees. This action facilitates future authorizations of a broad range of new wireless communications services that employ emerging technologies.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Lee Thomas, Office of Engineering and Technology, (202) 653–6204.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order and Memorandum Opinion and Order adopted July 15, 1993, and released August 13, 1993. A summary of the Further Notice of Proposed Rule Making initiating this proceeding and the First Report and Order being reconsidered may be found at 57 FR 49020 (October 29, 1992). This action will not add to or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Third Report and Order and Memorandum Opinion and Order

1. The Third Report and Order (Order) adopts rules that provide for the fair and equitable sharing of 2 GHz spectrum by new services and the existing fixed microwave services that currently use these frequencies, and for the relocation of existing 2 GHz facilities to other spectrum where necessary. The plan

provides licensees of services using emerging technologies with access to 2 GHz frequencies in a reasonable timeframe, and at the same time prevents disruption to existing 2 GHz operations and minimizes the economic impact on the existing licensees.

2. The Order adopts separate relocation policies for frequencies to be used by licensed emerging technology services and those to be used for unlicensed devices. For licensed services a fixed two year period is established, commencing with the Commission's acceptance of applications for services that use new technologies. During this period negotiations over the terms of relocation are encouraged but not required. After this fixed period expires, an emerging technology licensee may initiate a one year period for mandatory negotiations between the fixed microwave licensee and the emerging technology licensee. For unlicensed devices a single one year mandatory negotiation period is adopted that will commence with the initiation of negotiations by manufacturers of unlicensed devices or their representatives. For both licensed services and unlicensed devices, after expiration of the mandatory negotiation period, involuntary relocation of the fixed microwave facilities may be sought if agreement is not reached by the parties. In all instances of involuntary relocation the emerging technology provider will be required to pay all costs associated with the relocation.

3. The Order authorizes the grant of tax certificates to incumbent fixed microwave licensees for any sale or exchange of property in connection with voluntary agreements for relocation concluded during the fixed two year voluntary negotiation period.

4. With regard to resolving disputes resulting from relocation negotiations, the Commission concluded that such disputes can be resolved best through individual mediation and arbitration efforts rather than Commission adjudication. This approach is consistent with the Commission's commitment to use alternative dispute resolution (ADR) techniques to expedite and improve its administrative processes whenever feasible, (See Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party, 6 FCC Rcd 5669 (1991)). However, if negotiations are unsuccessful during the periods defined above, the parties may refer the matter to the Commission for resolution. In resolving disputes, the Commission will take the action it deems appropriate, either on the license of the incumbent or the authority of the emerging technology provider.

5. The Memorandum Opinion and Order addresses four petitions for clarification or reconsideration of its decisions in the First Report and Order in this proceeding, including the definition of public safety licensees. The public safety facilities exempt from mandatory relocation are defined as those part 94 facilities currently licensed on a primary basis under § 90.19 Police Radio Service; § 90.21 Fire Radio Service; § 90.27 Emergency Medical Radio Service; and subpart C of part 90, Special Emergency Radio Services, of which the majority of communications carried are directly used for police, fire, or emergency medical services operations involving safety of life and property. As an additional safeguard, current licensees of other part 94 facilities licensed on a primary basis under the eligibility requirements of part 90 subparts B and C may request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.

6. Regulatory Flexibility Analysis. Pursuant to 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the First Report and Order and Third Notice of Proposed Rule Making (First R&O/Third Notice,) *supra*. Written comments on the proposals in the First R&O/Third Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need for and Objective of Rules. Our objective is to provide spectrum for the development and implementation of new innovative technologies and services, while preventing disruption to current users of that spectrum. Providing spectrum for emerging technologies is necessary in order to bring new services to the public and to foster U.S. competitiveness in the global telecommunications marketplace.

B. Issues Raised by the Public in Response to the Initial Analysis. Many parties supported reallocating spectrum to accommodate emerging technologies. Although most suggested modifications to specific proposals set forth in the Third Notice, they did not suggest modifications specifically to the initial regulatory flexibility analysis with the exception of the U.S. Small Business Administration (USSBA).[1] USSBA, while generally supporting the Commission's actions in this proceeding, argues that the Commission should consider requiring the incumbents to pay for their relocation to other bands or alternative media because many of the potential users of the 2 GHz spectrum are small businesses who lack the substantial capital needed to move the incumbents. It claims this will delay or inhibit the development of emerging technologies. Further, it argues that most of the incumbents are large business that recoup their cost through rate regulation and, therefore, they would not suffer as their increased cost due to relocation would be absorbed, for the most part, by their customers. USSBA also suggests that tax certificates or deferred payment schedules should be considered as an alternative to reduce the substantial costs faced by small businesses in developing emerging telecommunications technologies.

We are cognizant that the cost to relocate the incumbent facilities is substantial and will to some degree impede both large and small businesses' ability to develop emerging technologies. However, as stated above, the 2 GHz fixed microwave bands support a number of industries that provide vital services to the public; therefore, we are committed to ensuring that the incumbents' services are not disrupted and that the economic impact of this proceeding on the incumbents is minimized. Further, we must take into consideration that not all of the incumbent licensees are big business, particularly in the bands above 2 GHz, and that many of the licensees are local government entities that are not funded through rate regulation.

We believe that tax certificates would further our policy of encouraging voluntary agreements to relocate fixed microwave facilities to other bands or other media during the initial two year period. Tax certificates would remove the possibility of any financial disincentive to relocate in instances that a 2 GHz fixed user may be deemed to have received a capital gain under the tax laws due to new facilities acquired to implement the relocation. In Telocator, the Commission broadly interpreted its authority to issue tax certificates, as defined in section 1071 of the IRS Code, to include services other than a radio broadcasting station in order to further the Commission's pro-competitive policies. As with our tax certificate policy to cover certain cellular radio transactions set forth in Telocator, we find it in the public interest to authorize grant of tax certificates to incumbent fixed microwave operators during the initial

[1] See USSBA at 5–7.

two year period to facilitate voluntary agreements effectuating our policy of providing 2 GHz spectrum for emerging technology providers. Accordingly, we are authorizing the grant of tax certificates for any sale or exchange of property in connection with voluntary agreements for the relocation of fixed microwave facilities during the two year period.

C. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives. We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

7. Accordingly, *it is ordered*, That the petitions for clarification or reconsideration filed by American Public Power Association, Apple Computer, Inc., Pacific Telesis Group, and the Utilities Telecommunications Council are granted to the degree stated above and are denied in all other respects.

8. Further, *it is ordered*, That parts 21, 22, and 94 of the Commission's rules and regulations are amended as specified below, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(g), and 303(r).

9. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Parts 21, 22 and 94

Radio.

Amendatory Text

I. Part 21 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.50 is revised to read as follows:

§ 21.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Domestic Public Fixed Radio Services to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies may negotiate with Domestic Public Fixed Radio licensees in these bands for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Domestic Public Fixed Radio licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) The Commission will amend the operating license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

II. Part 22 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.50 is revised to read as follows:

§ 22.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Public Mobile Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies may negotiate with Public Mobile Service licensees in this band for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Public Mobile Service licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology service, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) The Commission will amend the operating license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any

reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

III. Part 94 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.59 is revised to read as follows:

§ 94.59 Transition of the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from Private Operational-Fixed Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies may negotiate with Private Operational-Fixed Microwave Service licensees in these bands for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Private Operational-Fixed Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section who will be exempt from any mandatory relocation, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) The Commission will amend the operation license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities are not required to be relocated, provided that the majority of communications carried on those facilities are used for police, fire, or emergency medical services operations involving safety of life and property.

The facilities within this exception are those part 94 facilities currently licensed on a primary basis under the eligibility requirements of § 90.19 of this chapter, Police Radio Service; § 90.21 of this chapter, Fire Radio Service; § 90.27 of this chapter, Emergency Medical Radio Service; and subpart C of part 90 of this chapter, Special Emergency Radio Services. As an additional safeguard, current licensees of other part 94 facilities licensed on a primary basis under the eligibility requirements of part 90, subparts B and C of this chapter, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21353 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–119; RM–8215]

Radio Broadcasting Services; Hali'imaile, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C for Channel 288A at Hali'imaile, Hawaii, and modifies the construction permit for Station KPMW(FM) to specify operation on Channel 288C, at the request of RC Broadcasting, Inc. See 58 FR 26947, May 6, 1993. Channel 288C can be allotted to Hali'imaile, Hawaii, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 kilometers (8 miles) southwest. The coordinates for Channel 288C at Hali'imaile are North Latitude 20–49–24 and West Longitude 156–27–27. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–119, adopted August 10, 1993, and released August 27, 1993. The full text of this

Commission decision is available for inspection and copying during nomal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

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 Hawaii, is amended by removing Channel 288A and adding Channel 288C at Hali'imaile.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–21313 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–117, RM–8214]

Radio Broadcasting Services; Kahalu'u, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 291C for Channel 291A at Kahalu'u, Hawaii, and modifies the license for Station KLEO(FM) to specify operation on Channel 291C, at the request of Brewer Broadcasting Corp. See 58 FR 26947, May 6, 1993. Channel 291C can be allotted to Kahalu in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 17.6 kilometers (11 miles) north of the community at coordinates 19–44–30 and 155–57–23. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–117, adopted August 10, 1993, and released August 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

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 Hawaii, is amended by removing Channel 291A and adding Channel 291C at Kahalu'u.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–21312 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. 74–14; Notice 82]

RIN 2127–AE46

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: For a number of years, vehicle manufacturers have been permitted to comply with the agency's automatic crash protection requirements by means of any technology that provides the specified levels of protection in a 30 miles per hour barrier crash test. The two types of automatic crash protection currently chosen by manufacturers for installation in their vehicles are air bags and automatic belts. However, pursuant to a new statutory requirement, this final rule specifies that manufacturers must install air bags.

In addition, this final rule requires that labels bearing specified information about air bags be placed in vehicles equipped with air bags, and that additional, more detailed information about air bags be provided in the owner's manual. These requirements are intended to ensure that consumers will have access to important safety information about the air bags installed in their vehicles.

DATES: *Effective date:* These amendments are effective March 1, 1994. *Compliance dates:* Mandatory air bag requirements: See the Compliance Dates section at the beginning of the "Supplementary Information" section. Owner's manual requirements: March 1, 1994. Vehicle label requirements: September 1, 1994.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received by October 4, 1993.

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

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, 400 Seventh Street SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION:

I. Compliance Dates

At least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 must be so equipped.

At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. Manufacturers may count towards compliance with the 80 percent requirement those light trucks it produces that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position.

Every light truck manufactured on or after September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. Multistage light trucks are required to comply with the same requirements that apply to comparable single stage light trucks.

II. Background

A. Existing Standard

Standard No. 208, *Occupant Crash Protection*, is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. The standard has long required the installation of safety belts in passenger cars and other vehicles. Since September 1, 1989, Standard No. 208 has also required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. Automatic crash protection requirements for trucks, multipurpose passenger vehicles (MPVs) and buses are being phased in over a three-year period beginning September 1, 1994.

Vehicles equipped with automatic crash protection protect their occupants by means that require no action by vehicle occupants. The two types of automatic crash protection currently offered on new vehicles are automatic safety belts (which help to ensure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). The effectiveness of the automatic crash protection in a vehicle is assessed through dynamic testing. A vehicle must comply with specified injury criteria, as measured on a test dummy, when tested in a 30 miles per hour barrier crash test.

B. Statutory Requirement for Rulemaking

Section 2508 of the NHTSA Authorization Act of 1991 (part of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)) requires the agency to issue, not later than September 1, 1993, a final rule making certain amendments to Standard No. 208. This section requires that automatic crash protection must be provided by an inflatable restraint (i.e., an air bag) in passenger cars and in trucks, buses, and MPV's (other than walk-in van-type trucks and vehicles designed to be exclusively sold to the United States Postal Service) with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. (These vehicles, other than passenger cars, are collectively referred to as light trucks throughout the remainder of this preamble.) The section also requires that the seating positions protected by an air bag must also be equipped with a lap/shoulder belt. A schedule of dates by which vehicles must be equipped with air bags and lap/shoulder belts at both front outboard seating positions is set forth in the Act. The Act also requires certain information about air bags and lap/shoulder belts to appear in the owner's manual of new vehicles and requires NHTSA to establish procedures for providing temporary exemptions from the air bag requirement if there is an interruption in the supply of air bag components due to unavoidable events not within the control of vehicle manufacturers.

C. December 1992 Proposal

On December 14, 1992, NHTSA published in the **Federal Register** (57 FR 59043) a notice of proposed rulemaking (NPRM) to implement the requirements of section 2508. Both with respect to the issues of which vehicles would be subject to the air bag mandate and the schedule for compliance, the agency simply followed the requirements specified in the statute.

The agency explained in the NPRM that, with respect to passenger cars, at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 would be required to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 would have to be so equipped.

NHTSA explained that, with respect to light trucks, the proposal would require that a least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 be equipped with an air bag and a manual lap/shoulder belt. The agency noted, however, unlike the requirements for passenger cars, the Act does not require the air bag and manual lap/shoulder belt to be provided at both the driver's and right front passenger's seating position on light trucks manufactured between September 1, 1997 and September 1, 1998. Instead, each manufacturer may count, towards compliance with the 80 percent air bag requirement, those of its light trucks that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position. Every light truck manufactured on or after September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions.

NHTSA also proposed to require certain safety information about air bags and safety belts to be provided in the owner's manual of vehicles equipped with air bags and on labels to be placed on the sun visors. The agency's proposal to require information to be provided in the owner's manual essentially followed the requirements of section 2508. In response to that section's directive that this requirement take effect as soon as possible, the agency proposed an effective date of 180 days after publication of a final rule.

The agency's proposal to require information to be provided on the sun visors was issued in response to a petition for rulemaking from the Motor Vehicle Manufacturers Association (now the American Automobile Manufactures Association or AAMA, and hereafter referred to by that name). NHTSA proposed to require five brief statements to be placed on the sun visor, as well as an additional label elsewhere in the vehicle to alert occupants to the information on the sun visors and the location of the air bag. The agency also proposed to update an existing labeling requirement concerning air bag maintenance to limit it to vehicles equipped with air bag systems that require periodic maintenance or replacement.

As required by section 2508, NHTSA also proposed procedures for providing temporary exemptions from the air bag requirement if there is an interruption in the supply of air bag components due to unavoidable event not within the control of vehicle manufactures. Finally, the agency proposed reporting requirements to accompany the phase-in of the requirement for mandatory air bags.

III. Public Comments

NHTSA received about 25 comments, including ones from nine auto manufacturers, several automotive trade associations, insurance affiliates, medical and safety organizations, and the Institute of Scrap Recycling Industries (ISRI). Because the agency simply followed the requirement specified in section 2508 in developing its proposal with respect to the vehicles subject to the air bag mandate and the schedule for compliance, the agency did not receive any comments concerning those issues beyond ones of general support. However, NHTSA received numerous comments concerning the proposal to require safety information to be provided on the sun visor and on the proposed procedures for providing temporary exemptions from the air bag requirement. In addition, ISRI raised concerns about hazards to auto recycling operations which it believes are created by air bag canisters. Further, the Environmental Protection Agency (EPA) provided comments on the agency's Environmental Assessment. A more specific discussion of the

comments, and the agency's responses, are set forth below.

IV. Agency Decision

A. Requirement for Air Bags

Under today's final rule, at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 are required to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 must be so equipped.

In addition, at least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. However, manufacturers may count, towards compliance with the 80 percent air bag requirement, their light trucks that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically tested manual lap/shoulder belt at the right front passenger's position. Every light truck manufactured on or after September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. Multistage light trucks are required to comply with the same requirements that apply to comparable single stage light trucks.

B. Information to Appear on Labels and in Owner's Manuals

1. Labels

NHTSA proposed to require the following five statements to be placed on the sun visors of vehicles equipped with air bags:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child restraints in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

In addition, for those vehicles for which regular maintenance or scheduled replacement is recommended for the air bag, NHTSA proposed to require the recommended maintenance or replacement schedule to appear on the sun visor label. The agency also proposed to require additional labels to alert vehicle occupants to the presence of the sun visor labels and the location of the air bag. The agency noted that there would be a particular concern about alerting occupants to the sun visor label if manufacturers affixed the label on the side of the visor that is not generally visible. NHTSA indicated that one possibility would be to require a label to be placed on each air bag cover stating: "Contains air bag. Please read important safety information labeled on sun visor."

NHTSA received numerous comments concerning its labeling proposal. The vast majority of the commenters generally supported the agency's proposal, although a number recommended various changes in the content of the label.

As indicated above, the agency issued its labeling proposal in response to a petition for rulemaking submitted by AAMA. That organization stated that it strongly supports NHTSA's proposal of a requirement that a label be permanently affixed to the sun visor for each front outboard seating position equipped with an air bag, and the agency's goal of ensuring that the text of the label achieves the optimal balance between the need to inform the public about the types of occupant behavior and uses that may reduce the effectiveness of air bags and the equally important need of avoiding a label with added language that would potentially create an information overload.

While AAMA agreed that the language proposed by NHTSA would promote consumer understanding about air bags and proper use of air-bag-equipped vehicles, it suggested several changes which it believes would result in even greater benefits. That organization stated that the purpose of its suggested modifications would be to:

(1) Provide a "signal" word and symbol;

(2) Identify the risk;

(3) Provide instructions; and

(4) Identify the consequences of failing to follow instructions.

AAMA also commented that it recognizes that numerous factors make it extremely difficult to determine what type of label is likely to be the most effective. That organization stated that it believes that the importance of a uniform label outweighs any differences between the version proposed by the agency and AAMA's suggested version.

The Automotive Occupant Restraints Council (AORC) commented that the proposed sun visor label will provide valuable information to the public about the proper use of the seat belt/air bag safety equipment which is not necessarily widespread through other information sources, yet is essential for maximum protection.

Volkswagen stated that it agrees that the ideas expressed in the proposed label should be included. It suggested adding a title to the label, such as "Important Air Bag Safety Information," to alert consumers to its subject matter. That company also suggested that the label indicate that air bags are not designed to deploy in various types of crashes, such as side impacts, and include a statement about the consequences of failing to observe the recommendations on the label.

SafetyBeltSafe U.S.A. recommended adding a statement indicating the presence of an air bag. By contrast, the Advocates for Highway and Auto Safety (Advocates) argued that, as the installation schedule for air bags proceeds, it may be necessary to indicate by a label which vehicles are not equipped with air bags.

Honda and Volvo Recommended that NHTSA not require specific language for the sun visor label, suggesting instead that the agency permit each manufacturer to use the proposed language as guidance for creating their own language. Honda noted that the agency had used this approach for the information that must appear in the owner's manual, on the basis that the manufacturer could present the information in the most effective manner and in a way that is tailored to the features of the air bag system in the particular vehicle. That company argued that the same logic should be applied to the wording of the sun visor label.

Advocates stated that it does not believe that a special notice or label regarding the means of obtaining the maximum protection from the installed air bag needs to be permanently affixed to the vehicle, and that the required statement of such information in the owner's manual is sufficient. That organization stated, however, that it is aware that manufacturers are already providing this information voluntarily in various forms, and argued that it would be counterproductive to present this information by way of unnecessarily alarming statements. Advocates stated that, for this reason, it supports the uniform information label proposed by the agency as a straightforward means of communicating the do's and don'ts that should be followed to obtain the maximum safety protection from the air bag. That organization stated that if NHTSA determines that such a label is needed, no other informational statements, directions or warnings should be permitted to confuse the intended message.

The Coalition for Consumer Health and Safety (Coalition) stated that it is

concerned that motor vehicle manufacturers may put their own language on labels that will inadvertently alarm motor vehicle occupants. That organization stated that it supports the agency's draft language in the NPRM for an information label and opposes expanding upon the proposed language.

The National Automobile Dealers Association (NADA) stated that it believes consumer information regarding proper air bag use should be confined to the owner's manual. It argued that while it may be worthwhile to highlight the existence of such owner's manual information with a label inside the passenger compartment, an extensive, permanent sun visor label may constitute information overload.

The second and third of the proposed information statements, i.e., those dealing with placement of rearward-facing child restraints and sitting too close to the air bag, generated a number of specific comments. SafetyBeltSafe U.S.A. recommended a stronger warning about placing rearward-facing child restraints in front passenger seat positions. That organization also suggested adding a schematic drawing to the label text, showing an infant in a child restraint with the international "no" sign superimposed, for persons who do not understand written English well. Robert Potter, a private individual, argued that some consumers seeing the proposed language about placement of rearward-facing child restraints may believe the solution is to turn the child restraint to a forward-facing position, and suggested alternative language.

AAMA suggested specifying different labels for vehicles with driver-only air bags and for vehicles with air bags for drivers and right-front occupants, because the language addressing child restraints does not apply to driver side air bags. Since the concern about placement of rearward-facing child restraints only applies to vehicles with passenger-side air bags, the final rule provides that the statement may be omitted from vehicles with driver-only air bags.

Advocates argued that the proposed statement advising occupants not to sit or lean "unnecessarily close" to the air bag is vague and might cause drivers to position their seats further back than usual, in a more rearward position than is optimal. Advocates suggested the following statement: "Adjust the driver's seat to the proper position for the size and height of the driver, but do not lean unnecessarily close to the air bag."

The Insurance Institute for Highway Safety (IIHS) stated that the proposed warning not to sit too close or lean over the air bag implies that being too close to the steering wheel is a problem only in cars with air bags. That organization stated that the steering wheel is the number one hazard for drivers in crashes in all types of vehicles and that, similarly, the dashboard and the windshield are dangerous impact surfaces for front seat passengers who are sitting too far forward for the vehicle's restraint system to work properly. IIHS argued that the proposed warning could mislead the public by implying that air bags can cause fatal or serious injuries that would not have occurred in a comparable vehicle without an air bag, and stated that the warning about sitting too close should apply to all vehicles and not just those equipped with air bags.

After considering the comments, NHTSA has decided to adopt the sun visor labeling requirement largely as proposed. Under today's final rule, the wording of the five information statements is the same as set forth in the NPRM. However, the phrase "CAUTION, TO AVOID SERIOUS INJURY:" is added at the top as a heading. In addition, the final rule specifies that no other information may appear on the same side of the sun visor to which the label is affixed. Except as noted below, no other information about air bags or the need to wear seat belts may appear anywhere on the sun visors.

As discussed in the NPRM, the purpose of the sun visor labeling requirement is to ensure that vehicle occupants have the basic information necessary to receive the maximum safety protection from their air bags. In developing the language for the proposed label, the agency sought to set forth the basic do's and don't's that occupants should follow to obtain maximum protection from air bags, while avoiding a label which creates an "information overload," in response to which, consumers would likely pay less attention to the information.

NHTSA agrees with those commenters which recommended adding a title or heading to the sun visor label, for the purpose of drawing attention to the label. The agency is adopting the phrase "CAUTION, TO AVOID SERIOUS INJURY:" since it will attract occupants' attention to the label and provide a brief statement of the risks of improper use and consequences of failing to follow the instructions. NHTSA also notes that the brevity of that heading will ensure that it will not contribute to an "information overload." The agency is not adopting a symbol in addition to the words, since it believes that the words will draw sufficient attention to the label.

NHTSA does not agree with NADA's suggestion that the statements proposed in the NPRM create an information overload. In particular, the agency disagrees with that organization's characterization of the statements as an "extensive" label. The agency avoided an extensive label by proposing to require only five or six brief statements on the label.

However, NHTSA is not adding additional statements to the label because it believes that such additions would contribute to an "information overload," thereby diluting the impact of the most important information. The agency agrees that it is appropriate to provide consumers with additional information about the proper use of air bags, such as information about the crash modes for which air bags are designed to work, and further explanation about the risks of improper use and the consequences of failing to follow instructions. However, NHTSA believes that the sun visor label is not the appropriate place to provide such additional information. The agency believes that persons are likely to spend only a very limited time reading labels while seated in their vehicles. Therefore, it is crucial to ensure that labels providing important safety information are brief and identify the most important information. Manufacturers are free, of course, to provide additional information in other places, such as the owner's manual.

The agency also does not believe it is necessary to add an additional statement specifically indicating the presence of an air bag. The statements on the sun visor label already include several references to air bags. NHTSA notes that a requirement for a label indicating that a vehicle is not equipped with air bags would be outside the scope of this rulemaking. The agency observes, however, that prospective purchasers can easily find out from dealers whether a vehicle has air bags.

NHTSA has also concluded that the sun visor label should be uniform for all vehicles. The agency agrees with AAMA that a uniform label is necessary to ensure that all vehicle occupants are repetitively exposed to consistent information and instructions and in a consistent format, since consistency and repeated exposure are most likely to result in appropriate consumer behavior. Given the benefits of consistency and repeated exposure, as well as the need to avoid information overload, the agency is not adopting the suggestion of Honda and Volvo that

manufacturers be permitted to formulate their own labels.

While the agency carefully considered the comments recommending various changes in the statements dealing with placement of rearward-facing child restraints and sitting too close to the air bag, it decided not to make any changes in those statements. With respect to SafetyBeltSafe USA's suggestion for a stronger warning about child restraints, NHTSA believes that the statement "Do not install rearward-facing child restraints in any front passenger seat position" is already strong. The agency is not adopting that organization's suggestion for the addition of a schematic drawing concerning the use of rearward-facing child restraints since it believes that such an addition would contribute toward an information overload. Manufacturers are free, of course, to provide schematic drawings in the owner's manual.

NHTSA does not agree with Mr. Potter's suggestion that some occupants seeing the language about placement of rearward-facing children restraints are likely to believe the solution is to turn the child restraint to a forward-facing position. However, the agency shares that commenter's concern that consumers may not understand the proper use of rearward-facing child restraints. In a separate rulemaking, the agency has not proposed to require a label on child restraint systems that can be used in rear-facing positions. The label would provide instructions about proper placement of the child restraint. See 58 FR 19792, April 16, 1993. Thus, in another forum, the agency is taking steps to ensure that consumers understand the correct use of such child restraints. The agency is therefore not adopting Mr. Potter's suggestion for changing the statement about child restraints.

BMW requested that manfuacturers be permitted to omit the statement about placement of rearward-facing child restraints if "technical means, whatever they may be," can prevent inflation of the air bag if a child is restrained. The agency does not believe it would be appropriate to consider granting BMW's request without knowing more abut the technical means that might be used.

NHTSA does not agree with Advocates' suggestion that the statement advising occupants not to "sit or lean unnecessarily close to the air bag" is vague and likely to cause some drivers to position their seats in a position that is more rearward than optimal. The agency notes that occupants consider a number of factors in determining which seating position is optimal for them. This statement provides occupants with one additional factor to consider in making that decision. The agency believes that drivers reading the admonition not to sit or lean "unnecessarily close" to the air bag will understand that it is, of course, necessary for them to sit in a position that is sufficiently forward to have good visibility and enable them to reach the vehicle's controls.

NHTSA agrees with IIHS that the safety concern about front seat occupants sitting or leaning too far forward is equally valid for vehicles not equipped with air bags as for vehicles with air bags, given the hazard of contacting the steering wheel, dashboard and windshield. However, the agency does not believe that the statement about sitting too close to the air bag implies that this is a problem only in vehicles with air bags. For the reasons discussed below, the agency is not adopting that organization's suggestion to require the warning for all vehicles.

As discussed in the NPRM, the agency proposed this statement because sitting or leaning too close to the air bag creates the chance of injury from a deploying air bag. While it may true that the same occupant behavior in vehicles without air bags creates a risk of similar injury from other sources, that fact does not reduce the need to advise occupants not to sit too close to the air bag. The agency notes that a labeling requirement for vehicles without air bags would be outside the scope of this rulemaking. NHTSA observes, however, that any such requirement would soon be moot as an ever increasing number of vehicles are equipped with air bags.

The agency also notes that ensuring that consumers have appropriate knowledge about safe conduct in the vicinity of air bags is important for promoting continued consumer acceptance of air bags. If persons hear about someone being injured by a deploying air bag, it is important that they understand that the risks of such an injury can be reduced or eliminated by safe conduct around the air bag, including not sitting or leaning too close to the air bag.

Commenters on the agency's labeling proposal addressed a number of issues in addition to those relating to the content of the sun visor label. Several commenters requested greater flexibility in where the label may be located. GM commented that although it agrees that the sun visor is a potentially desirable location, it does not believe a requirement specifying that location is essential or always practicable. That company stated that the addition of sun visors of such features as vanity mirrors, with and without lighting, and secondary sunshades may restrict the area to which a label can be affixed. It also stated that specific vehicle geometry may dictate that the optimal position for the label is on the headliner above the sun visor. GM suggested that the agency require the label to be affixed "on or near" the sun visor. AAMA's comment made a similar argument. Rover stated that it is probable that in most cases a sun visor would be likely to be the most convenient place for the label, but requested that alternative locations be permitted provided that the message may be easily read by a person with normal eyesight seated at each of the front outboard seating positions. BMW requested that the label be permitted on either the windshield or the sun visor.

NHTSA also received numerous comments concerning the issue of additional requirements, such as "alert" labels, to ensure that occupants are aware of the air bag information label and/or the location of the air bag. The American Medical Association (AMA) stated that the air bag information should be required to appear on both sides of the sun visor, so that it is constantly visible. That organization stated that, in addition, the agency should require alert labels to draw attention to the sun visor label.

The American Academy of Pediatrics (AAP) stated that, due to its concern about the proper use of infant seats in vehicles with air bags, it believes it is critical to alert passengers to the presence of the safety information on the sun visor. That organization recommended the placement of a label in a constantly visible location, such as the air bag cover, which states that the vehicle contains an air bag and that important safety information is labeled on the sun visor.

SafetyBeltSafe U.S.A. stated that it is essential that the air bag information label be visible at all times. That organization stated that it would be acceptable for the label to be on the back side of the visor only if a separate, brief label was permanently affixed to the dashboard or in a similar, prominent position.

Advocates stated that it has no opinion on which side of the visor the information label should be placed. It added, however, that placement in the constantly visible location is most reliable for obtaining the attention of the driver, but that it may be distracting to the driver to have the label in view at all times when the sun visor is not in use. That organization stated that NHTSA should consider whether one label should be placed on the driver's

sun visor where it will not generally be visible and another label on the passenger side sun visor in the constantly visible location. Advocates commented that information about the location of the installed air bag is, or could be, provided in the owner's manual.

GM stated that it does not believe that an additional label to alert an occupant to the location of the air bag label is warranted. That company also stated that it does not believe that a label identifying the air bag on the steering wheel and instrument panel is necessary to heighten public awareness, nor would it enhance motor vehicle safety. GM argued that the air bag label, along with the ongoing level of public education regarding air bag availability and positioning, make it unnecessary to label the air bag's specific position in a vehicle.

Volkswagen stated that it believes that a reference label on the steering wheel hub or instrument panel directing occupants to the sun visor label is unnecessary. That company argued that the air bag label should reach the attention of consumers based on its display on the sun visor and the inclusion of related information in the owner's manual.

Honda stated that a permanent label inside the occupant compartment advising that the vehicle has an air bag and referring to the sun visor label is not necessary or appropriate. That company argued that this is not information that every vehicle occupant needs every time they enter the car. Honda stated that it believes that a removable label or hung tag in a new vehicle would be sufficient. That company also requested that if the agency requires air bag covers to be labeled with a symbol that it consider the abbreviation for Supplemental Restraint System, "SRS."

Rover commented that it agrees that there may be a need to alert occupants to the location of the air bag information if it is not visible. That company suggested that this notice need only be visible when the air bag information is not in view. Rover suggested that the agency permit a smaller reminder notice to be on one side of the sun visor when the air bag information is on the other. Rover also stated that if NHTSA determines that there is a need for air bag covers to be marked with a symbol, the agency should permit alternative markings such as "SRS" or "AIR BAG."

AORC commented that additional removable warning stickers affixed to the air bag cover or embossed universal symbols alerting the occupant to the sun visor information will not direct the second or later owner to the visor since the sticker will have been removed and the symbol, by itself, will not refer an occupant to the sun visor.

After considering the comments, NHTSA has decided to require a label providing information about safe conduct around air bags to be located on both sun visors. In addition, if the label on the passenger side sun visor is not visible when the visor is in the stowed position, an additional "alert" label is required to be permanently affixed either to that visor so that the label is visible when the visor is in that position or to the cover of the air bag for the passenger seating position, at the option of the manufacturer. This option will give the manufacturers flexibility in deciding where to place the alert label. Thus, when the passenger side sun visor is in the most common position, i.e., the stowed position, either the information itself will be visible on the visor or an alert label will be visible. The agency believes that this requirement will ensure that passengers are aware of the information. Since drivers are more likely to use the sun visor, as well as have greater familiarity with the vehicle they drive, the agency has concluded that a requirement for the information to be placed on either side of the visor is sufficient to ensure that drivers are aware of the information.

The agency believes that the benefits associated with requiring a uniform label are maximized by requiring a standardized location, i.e., placement on the sun visors. Occupants who may wish to check the label will easily be able to find it on all vehicles. Moreover, a standardized location for the label enables the agency to require a uniform alert label to refer occupants to the location of the air bag information label. In addition, all vehicles have sun visors, the sun visors are always in the immediate field of view of occupants, and sun visors are likely to be permanent locations.

The agency disagrees with GM's arguments that the sun visor location presents practicability problems for some vehicles. Manufacturers can design sun visors so that they can include the label as well as features such as vanity mirrors and secondary sunshades. The agency notes, for example, that some manufacturers currently provide safety information about occupant restraints on a panel on the underside of the sun visor which flips up to expose the vanity mirror.

The agency agrees with the views expressed by the medical community, represented by the AMA and AAP, about the importance of the safety information set forth on the sun visor label. Since sun visors are normally left in the stowed position, however, the agency believes there is a need to alert occupants to the passenger side sun visor label only if the label is on the side of the sun visor that is not visible in the stowed position. As indicated above, since drivers are more likely to use the sun visor, as well as have greater familiarity with the vehicle they drive, the agency believes that a requirement for the information to be placed on either side of the visor is sufficient to ensure that drivers are aware of the information. NHTSA does not agree with the AMA that is necessary for the full safety information to be constantly in the view of the driver since the specified requirements are sufficient to ensure that occupants are aware of the information.

As indicated above, NHTSA indicated in the NPRM that it was considering requiring a label to be placed on each air bag cover stating: "Contains air bag. Please read important safety information labeled on sun visor." For those vehicles required to have an alert label, the agency has concluded that a message which reads "Air Bag. See Sun Visor." should be used for labels affixed to the air bag cover, and a message which reads "Air Bag. See Other Side." should be used for labels affixed to the sun visor. These messages will convey the same message in less space. The agency is specifying "Air Bag" instead of "SRS" since consumers are more likely to understand its meaning. NHTSA has decided that it is unnecessary to require labeling of the location of air bags generally, since all vehicles will soon have air bags and consumers are likely to understand where they are located.

Toyota commented that the information required for the sun visor label could be provided in the form of a separate label that is attached to the sun visor, or incorporated into the sun visor mold so that it is printed directly on the sun visor during the manufacturing process. That company stated that the latter option would result in less expensive manufacture of the sun visor and a reduction in the number of vehicle assembly parts, and requested that the final rule permit both options.

The agency agrees that both options identified by Toyota should be permitted and has drafted the final rule to permit them. NHTSA notes, however, that the specified information could be difficult to read if contrasting colors were not used, e.g., if the information were molded in the form of raised letters having the same color as the background. In order to ensure legibility, the final rule specifies that the

letters must be of a color that contrasts with the background of the label.

Toyota also raised an issue concerning the agency's proposal to update Standard No. 208's existing labeling requirement concerning air bag maintenance to limit it to vehicles equipped with air bag systems that require periodic maintenance or replacement. That company noted that while the preamble stated that the recommended maintenance or replacement schedule would have to appear on the sun visor label, the proposed regulatory text stated the information "may be combined" with the information required on the sun visor label. Toyota stated that it does not believe that it would be necessary to limit the passenger compartment location for a maintenance or replacement label to the sun visor label, and that it assumes the agency intended to give the manufacturer the option to select a different interior location.

Toyota is correct that the agency intended to provide manufacturers with the option of providing maintenance and replacement information on either the sun visor label or elsewhere in the passenger compartment. The agency is therefore adopting the regulatory text proposed in the NPRM.

AORC recommended that the agency require air bags to be maintenance free for the life of the vehicle since air bags are mandated safety equipment and it should not be left to the owner to assure performance. It therefore suggested that no maintenance label should be allowed.

NHTSA notes that the issue of requiring air bags to be maintenance free is outside the scope of this rulemaking. Therefore, the agency cannot consider adopting AORC's suggestion as a final rule. The agency observes, however, that the market has been moving in the direction of maintenance-free air bags.

2. Owner's Manuals

Section 2508(a)(2) requires that the amendment to Standard 208 shall also require, to be effective as soon as possible after the promulgation of such amendment, that the owner's manuals for passenger cars and trucks, buses, and multipurpose passenger vehicles equipped with air bags include a statement in an easily understandable format that:

(a) The vehicle is equipped with an inflatable restraint referred to as an "air bag" and a lap and shoulder belt in either or both the front outboard seating positions;

(b) The air bag is a supplemental restraint;

(c) It does not substitute for lap and shoulder belts which must also be correctly used by an occupant in such seating position to provide restraint or protection not only from frontal crashes but from other types of crashes or accidents; and

(d) All occupants, including the driver should always wear their lap and shoulder belts, where available, or other safety belts, whether or not there is an inflatable restraint.

In accordance with that section, the agency proposed to require that this information be provided in owner's manuals of vehicles equipped with air bags. NHTSA noted that it was not proposing to establish the precise language that must appear in the owner's manual. Instead, under the proposal, manufacturers were to be required to provide this information in their owner's manuals, and allowed to choose the language they believe would most effectively convey the information to readers of the owner's manual.

In addition to the statutorily required information on the importance of belt use, the agency also proposed to require the owner's manual to provide safety information about air bags, consistent with the information provided on the sun visor label. In particular, NHTSA proposed to require that the owner's manual provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants, and information about not placing objects on the air bag over or between the occupant and the air bag. As with the other owner's manual information, the agency did not propose the exact language that must appear, but instead proposed to permit manufacturers flexibility to choose the most effective language for their vehicles.

NHTSA received very few comments concerning the content of the information required to be provided in the owner's manual, other than ones of general support for the agency's proposal. However, SafetyBeltSafe U.S.A. commented that complete information on the positioning of infants in cars with passenger side air bags is essential in the owner's manual. It identified several points that it believes should be included.

NHTSA is adopting the owner's manual requirement as proposed. The agency believes that a requirement specifying that the owner's manual must provide any necessary precautions regarding the proper positioning of children at seating positions equipped with air bags to ensure maximum safety protection for those occupants is sufficient to ensure that information along the lines identified by SafetyBeltSafe U.S.A. will be provided. The agency further believes that providing manufacturers flexibility in choosing the language will result in more effective messages that are tailored for individual vehicles. Therefore, the agency is not providing more specific requirements concerning the information that must be provided.

3. Effective Date

In response to the statutory directive that the requirement for information in owner's manuals take effect as soon as possible (for the information that is required by statute), the agency proposed that the requirement become effective 180 days after publication of a final rule. The agency tentatively concluded that 180 days leadtime is needed to allow vehicle manufacturers to incorporate this new language into the owner's manuals of their vehicles equipped with air bags, but yet ensures that the public will be provided with this information in new vehicle owner's manuals as soon as possible. The agency proposed the same effective date for the other information to be included in the owner's manual, i.e., the information not required by statute, and for the labeling requirement.

Toyota stated that the proposed effective date of 180 days after issuance of a final rule would be insufficient for it to make the necessary design and retooling changes to ensure compliance. It requested one year's leadtime.

GM commented that, with a final rule expected around September 1, 1993, an effective date 180 days after publication of the final rule would occur during the 1994 model year. That company stated that this would force an unnecessary mid-model year change to vehicles manufactured with an air bag system. It requested an effective date of September 1 of the calendar year following publication of the final rule. Volvo requested the same effective date.

Honda stated that if the agency publishes a final rule by September 1, 1993 and establishes an effective date of March 1, 1994, it would expect no problem in complying. That company stated that an effective date occurring near the end of the model year, i.e., during July or August, would create difficulties since manufacturers are heavily involved in preparation for the next model year. It added that a change so late would affect few production vehicles and thus not be cost effective.

SafetyBeltSafe U.S.A. commented that both the warning label and owner's manual requirement should go into effect as soon as practicable, so parents can have the benefit of the warning on the greatest number of vehicles equipped with passenger air bags. That

organization stated that 180 days leadtime seemed reasonable.

After considering the comments, NHTSA has decided to make the owner's manual requirements effective 180 days after publication of today's final rule, but to make the vehicle labeling requirements effective September 1, 1994. Since the former requirements only involve adding a statement to the owner's manual, they require relatively little leadtime. Moreover, since they can be met simply by adding an insert to the owner's manual, they do not require manufacturers to reprint existing owner's manuals. Since no commenter provided any arguments demonstrating that more than 180 days is required to meet the owner's manual requirements, and given the statutory requirement that the requirements take effect as soon as possible, the agency is making them effective 180 days after publication of today's final rule.

NHTSA recognizes that longer leadtime is required for the vehicle labeling requirements, since manufacturers may have to change the designs of their sun visors. Such changes may require retooling. Therefore, the agency is making these requirements effect September 1, 1994, thereby providing about a year's leadtime.

C. Temporary Exemption From Air Bag Requirements

Section 2508(c) requires the agency to prescribe the procedures to be followed by manufacturers in applying for temporary exemptions from the air bag requirements, as well as the content and timing of any such applications. That section also provides that a temporary exemption from the air bag installation requirements shall be granted only if the agency finds that there has been a disruption in the supply of any inflatable restraint component, or a disruption in the use and installation by the manufacturer of such component due to unavoidable events not under the control of the manufacturer, which will prevent the manufacturer from meeting its anticipated production volume of vehicles with air bags. In addition, the statute provides that any temporary exemptions must be conditioned upon the manufacturer's commitment to recall the exempted vehicles promptly to install the omitted air bags when adequate supplies of air bags become available to satisfy both anticipated production and recall volume requirements. The statute also provides that notice of each application for temporary exemption shall be published in the **Federal Register** and each notice of grant or denial shall be published in the **Federal Register**, along with the reasons therefor.

NHTSA proposed to provide a temporary exemption section in Standard No. 208 that is modeled closely after the temporary exemption provisions set forth in 49 CFR part 555. In the NPRM, the agency explained the proposed procedures as follows:

Each application for a temporary exemption from the air bag requirement would have to identify the components for the air bag system that have become unavailable due to circumstances beyond the manufacturer's control, explain briefly the cause of the disruption and why it is beyond the manufacturer's control, estimate the anticipated duration of the disruption, set forth any other information the manufacturer believes the agency should consider in reaching a decision on the application, and contain an unconditional statement by the applicant that an air bag will be installed in every vehicle at those seating positions for which a temporary exemption is granted in response to the application. The vehicle manufacturer would also have to propose a reasonable time within which it would recall all vehicles granted an exemption pursuant to this application and install the omitted air bags, and explain why it believes that period of time is reasonable.

Upon receipt of an application for temporary exemption, NHTSA would review the application to see if it was complete. The manufacturer would be advised if the application did not contain all the necessary information. If the application were complete, NHTSA would publish notice of the application in the **Federal Register.** After reviewing the information available to it, NHTSA would issue its decision to grant or deny the exemption application. In no event would NHTSA's final decision on the application be issued later than 60 days after the date on which a complete petition was received.

If NHTSA were to grant a temporary exemption, it would state that the exemption applies to vehicles manufactured between specified dates. The exemption would generally begin upon the date the grant notice was published in the **Federal Register** and end on the date specified in the notice. Under the proposal, the exempted manufacturer would be required to affix a label within the passenger compartment of every vehicle not equipped with an air bag. This label would state in block capitals:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____.

This label could only be removed from the vehicle after the manufacturer had recalled the vehicle and installed the required air bag(s). Upon removal of the label, the vehicle would be certified as complying with all the occupant crash protection requirements of Standard No. 208.

In addition, this notice proposes that if any vehicles are delivered without an air bag, pursuant to an exemption, the manufacturer shall furnish written notification to the dealer and to the first purchaser of the vehicle for purposes other than resale that:

1. This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).
2. The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).
3. The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the vehicle manufacturer's control.
4. The vehicle manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.
5. If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

NHTSA received numerous comments on the proposed temporary exemption procedures. Commenters addressed the vehicles for which the exemptions are available, the timing of the agency's response, the information required to be provided in petitions, the information required to be provided to consumers, and the manner for providing the information to consumers.

GM, Ford and Chrysler requested that the agency make the temporary exemptions available for vehicles manufactured before the statutory requirement for air bags takes effect. GM and Ford noted that a significant increase in air bag system production is expected to occur this summer as passenger car air bags are added to many car models, and expressed concern that this increased production is likely to result in an increased risk of the unavoidable conditions that may disrupt the supply of air bag components. The three manufacturers requested that the temporary exemptions be made available immediately for vehicles whose design incorporates an air bag to meet the requirements of Standard No. 208.

NHTSA notes that its authority to issue exemptions from safety standards is very limited. Section 2508(c) provides the agency authority to exempt motor vehicles from the requirements of subsection (a) or (b), or both, under specified circumstances. Those subsections do not require air bags in any passenger cars manufactured before September 1, 1996 or light trucks manufactured before September 1, 1997. Therefore, this exemption authority does not apply to vehicles manufactured before those dates, and the agency cannot make section 2508(c) exemptions

available for vehicles manufactured before those dates.

The only exemption authority the agency has for vehicles manufactured before the statutorily mandated dates for installing air bags is that expressly set forth in section 123 of the Safety Act (15 U.S.C. 1410). See *Nader* v. *Volpe*, 320 F. Supp. 266 (D.D.C. 1970). While that section provides several bases for granting exemptions, only one would be relevant to a situation where there is a disruption in the supply of air bags. Under section 123(a)(1)(A), the agency can provide temporary exemptions where compliance would cause substantial economic hardship to a manufacturer that has made a good faith effort to comply with the standard. However, since Congress authorized NHTSA to grant such exemptions only to manufacturers whose total annual production of motor vehicles is 10,000 or less, that type of exemption would not be available to major manufacturers such as GM, Ford and Chrysler.

Several commenters argued that the proposed 60-day period for NHTSA to respond to a petition is too long. GM stated that the proposed procedures would not provide the necessary relief in a timely manner to avoid costly plant closings should the need for a temporary exemption arise. That company stated that the proposed time for responding to a petition may result in plant closings for up to two months. GM stated that with the current scheduling practices of part deliveries to the assembly plants, a plant closing could become necessary within days after an unavoidable disruption in the supply of a part's scheduled delivery. It requested that some means be provided to allow an immediate exemption during the time a formal agency determination is being considered, such as allowing the manufacturer to make the initial decision to continue to produce the vehicles, under the same conditions of a formal petition being granted, until the agency evaluation is completed.

Ford stated that considering the extent of economic hardship that could result from a 60-day assembly shutdown due to an air bag supply disruption, it believes that it should be possible for the agency to decide whether to grant a petition in much less than 60 days. That company stated that it believes the agency should grant or deny any petition within 15 calendar days of receipt of a completed petition for temporary exemption. Ford also suggested that any exemption become effective as soon as it is issued, since the few days required for publication in the **Federal Register** could cause unnecessary economic hardship.

Chrysler stated that the proposed 60-day time period could mean a 60-day cessation in production of the vehicles in question unless it or its vendors maintained an expensive stock of vulnerable system elements to cover that contingency. That company stated that it fails to see how it would take more than a few days to verify the validity of a manufacturer's claim regarding the availability of air bag systems or components.

AORC requested that NHTSA provide a response within one to two weeks. That organization stated that this time frame is reasonable and would allow current supply practices to remain in effect.

After considering the comments, NHTSA has decided to provide that the agency will respond to petitions within 15 days after receipt of a complete petition. While NHTSA believes that extraordinary efforts may be necessary for the agency to finish the necessary analysis and respond to a petition in such a short time period, it is persuaded that a longer period could result in unnecessary economic hardship. For the same reason, the agency has also decided to make an exemption effective at the time it is issued. While NHTSA is adopting a 15-day response time, it notes that, if for some reason it is unable to respond within that time period, the delay would not result in an automatic grant of the petition.

The agency cannot adopt GM's request to provide immediate exemptions that are effective during the time a petition is being considered. Section 2508(c) provides that the agency may grant an exemption only if it finds that there has been a disruption in the supply of any inflatable restraint component, or a disruption in the use and installation by the manufacturer of such component due to unavoidable events not under the control of the manufacturer, that will prevent the manufacturer from meeting its anticipated production volume of vehicles with air bags. Thus, an exemption cannot become effective until the agency makes the required finding.

Ford stated that it is concerned about the proposed requirement that an exemption application contain an unconditional statement by the manufacturer that an inflatable restraint system will be installed in every vehicle at those seating positions for which a temporary exemption is requested in the application. That company stated that it does not believe that a manufacturer could provide such an unconditional statement, because the vehicles are not in the control of the manufacturer. Ford noted that a vehicle may not be remediable because the customer may refuse to have an air bag installed, or the vehicle may have been put out of service, exported or otherwise become unavailable for installation of the air bag. That company suggested that the agency require a statement that the vehicle manufacturer will make all reasonable efforts to install the air bag free of charge to the owner, including all efforts normally used to complete a safety recall ordered by the agency. Chrysler expressed similar concerns in its comment.

NHTSA recognizes that manufacturers cannot install air bags in vehicles that are destroyed in collisions or which owners refuse to return during a recall. The agency has revised the regulatory text in the final rule to make it clear that manufacturers must unconditionally commit to conduct a recall, but do not have to guarantee that air bags will be installed in vehicles that owners do not return. However, in order to ensure that air bags are installed in as many vehicles as possible, the agency is requiring manufactures to submit a plan setting forth steps they will take to ensure that air bags will be installed in as many vehicles as practicable.

Ford also expressed concerned about the agency's proposal to require an exemption petition to include an estimate of the time needed to correct the disruption, and for the dealer-purchaser notice to include the date for recall and installation of the missing air bags. That company stated that experience from past supply disruptions leads it to believe that estimating the length of a disruption is not a precise endeavor and that disruptions can last longer than originally expected. Ford also stated that the proposed requirement could cause unnecessary customer dissatisfaction if the vehicle manufacturer is unable to meet the specified date due to factors beyond its control.

Ford argued that the statute does not require that the manufacturer estimate the time to correct the disruption in applying for an exemption. Ford noted that the statute specifies that an exemption shall be conditioned upon the manufacturer's commitment to recall within a reasonable period of time proposed by the manufacturer and approved by the Secretary after such components became available in sufficient quantities to satisfy both anticipated production and recall volume requirements. That company stated that it believes that Congress did not expect that manufacturers would be

able to estimate the length of any supply disruption, and therefore would be unable to estimate the end date by which a recall would be completed. It stated that it believes that a recall date should not be required, but that the manufacturer should have the flexibility to provide an estimated recall date other than in the petition for exemption.

Chrysler stated that it believes it would be very difficult, if not impossible in some circumstances, for a manufacturer to provide anything more specific than an estimate of the time when a missing inflatable restraint will be replaced, as opposed to the "not later than" time proposed to be required in the dealer-purchaser notice. That company stated that, in some instances, it may be necessary for an air bag component supplier to completely re-establish a production facility, and that specifying a date and time for the resumption of deliveries can be only an estimate.

NHTSA notes that several dates are relevant in the exemption process. One is the date an exemption begins, an issue which was discussed above. Another is the date an exemption ends, i.e., the date when a manufacturer may no longer produce vehicles within air bags. A third relevant date is when exempted vehicles will be recalled to install the missing air bags. This would actually include a number of dates, since a recall would necessarily take place over a period of time.

Section 2508(c) requires that any exemption or renewal must be conditioned upon the manufacturer's commitment to recall the exempted vehicles for installation of omitted inflatable restraints within a reasonable time proposed by the manufacturer and approved by the Secretary after such components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements. Thus, the establishment of a time for recall is a necessary part of the exemption process. However, the agency believes that the language of section 2508(c) does not specify when the establishment of a time for recall must take place, i.e., as part of the granting of an exemption or at a later time.

The agency believes it would be desirable to specify a time for recall as part of the granting of an exemption. The setting of a date would ensure that a manufacturer would not procrastinate on a recall. In addition, purchasers would have assurance as to when an air bag would be installed.

NHTSA is persuaded by the comments, however, that in some possible circumstances, e.g., a major disruption in the supply of sodium azide, there may be too much uncertainty for a manufacturer to provide reliable estimates of when a disruption will be corrected or a recall take place. For the same reason, it may not be possible for the agency to make a determination as to what would constitute a "reasonable" time for recall.

The agency believes that the appropriate way to deal with this possibility is to provide greater flexibility in the exemption procedures. NHTSA is therefore requiring in the final rule that manufacturers provide estimates of various dates or explain why it is not possible to provide such estimates. The agency is also providing that it may attach such conditions as the Administrator may deem appropriate to a temporary exemption, including but not limited to requiring manufacturers to provide progress reports at specified times (including, as appropriate and to the extent possible, estimates of dates and times concerning when a supply disruption will be corrected and when recall will take place). Thus, If NHTSA decides that it is not possible to set certain dates as part of the grant of a petition, it may include appropriate conditions as part of the exemption to ensure that dates are set as soon as possible.

Similarly, the final rule specifies that, unless otherwise provided by NHTSA in an exemption, the manufacturer must provide certain information to dealers and purchasers, including a date by which the manufacturer will recall the vehicle. Thus, if NHTSA decides that a manufacturer cannot provide such a date, it may provide in the exemption that a date need not be given.

Advocates stated that another sentence should be added to the exemption label indicating to the purchaser the date by which the vehicle will be recalled by the manufacturer for the purpose of installing the air bag and that it will be installed at no charge. That organization also stated that the label should be installed in the location where the air bag would have been installed had no exemption been necessary. The Coalition recommended that the agency add a statement to the label with the date by which the manufacturer will recall the vehicle for installation of the air bag and a phone number the consumer can call for more information. Robert Schlegel stated that there should be a large marking on the exterior glass surface of the vehicle that makes it obvious to a prospective purchaser that a vehicle does not have an air bag.

NHTSA believes that the proposed requirement for a label to be affixed within the passenger compartment is sufficient to ensure that a prospective purchaser will know that a vehicle does not have an air bag. The agency is not specifying a more specific location for the label since the appropriate location is likely to vary depending on the interior design of the vehicle. While the agency agrees that it is important for consumers to be aware of the date by which the vehicle will be recalled (if it is possible for the manufacturer to provide such a date) and a phone number they can call for more information, this information will be included, to the extent possible, in the dealer-purchaser notice. NHTSA has therefore decided that it is unnecessary to also require the information on the exemption label.

Ford stated that the exemption label should not be required to contain the NHTSA exemption number. That manufacturer stated that requiring any specific information on the exemption label would likely further delay the resumption of vehicle production while labels are produced and distributed to assembly plants. Ford stated that it would prefer to design print generic exemption labels as soon as an exemption procedure is established.

While NHTSA recognizes that generic exemption labels could provide a minor benefit to manufacturers, the agency believes it is important that consumers be provided with the exemption number on the label. The agency notes that this provision has long been a part of the temporary exemption requirements set forth in 49 CFR part 555, and enables the consumer to easily identify the specific temporary exemption that is applicable. Moreover, the agency does not believe that this requirement is burdensome or will create any significant delays. Manufacturers can set up procedures in advance to ensure that exemption labels can be produced on short notice should the need arise.

Ford also stated that it believes the proposed wording for the vehicle exemption label and dealer-purchaser notices should be considered illustrative, but should not prevent a manufacturer from adopting wording that might be more appropriate to the vehicle or more readily understood by its customers. However, the agency has drafted the wording in a way that is understandable and appropriate for all vehicles. If the agency permitted manufacturers to adopt their own wording, the message could become diluted. However, since the agency can provide for changes in the notice as part of an exemption, a manufacturer could request a change that it believes is appropriate as part of its petition.

NADA stated that neither the statute nor the proposed regulation specifies the manner by which the notice is to be provided to the dealer or to the first purchaser at retail. That organization stated that to ensure that purchasers at retail receive this information, it urged the agency to specify that the manufacturer must insert in or include with the owner's manual the notification of the exemption.

The agency agrees with NADA that the regulation should specify how manufacturers must provide the notice to retail purchasers. NHTSA has decided to require manufacturers to provide the notice by registered mail within two weeks after purchase. The agency is specifying the use of registered mail because that means of notification will draw attention to the notice and ensure that purchasers are likely to read it.

In the NPRM, the agency proposed a provision stating that decisions to grant or deny petitions would be the final agency action on applications, so no petitions for reconsideration of such decisions would be processed or considered by the agency. Chrysler stated that it fails to see why the agency finds it necessary to propose that no petitions for reconsideration would be considered regarding its decision to grant, or more importantly, to deny a temporary exemption.

NHTSA does not believe that there is any reason to provide for petitions for reconsideration on agency responses to exemption petitions. The agency notes that it has not provided for such procedures in similar regulations. If a manufacturer whose petition has been denied obtains new supporting information not previously considered by the agency, it can submit a new exemption petition. NHTSA will not, however, consider petitions which are merely repetitious. If someone obtains information demonstrating that an exemption should be terminated, it can provide that information to the agency and request the agency to terminate the exemption. While the agency has decided not to provide for petitions for reconsideration, it has also decided that it is unnecessary to specifically cover this point in the regulatory text.

NHTSA notes that it proposed, as part of the exemption provisions, to specify that removal of the vehicle exemption label by the manufacturer or any of its dealers or distributors would constitute a certification that the vehicle complies in full with the inflatable restraint system requirement of Standard No. 208. The agency decided that such a provision is unnecessary.

D. Reporting Requirements

Whenever the agency specifies a phase-in of some performance requirement, it is necessary for enforcement of that phase-in to require manufacturers to report at the end of the production period its total production of vehicles and the number of such vehicles that are certified as complying with the relevant performance requirement. Accordingly, since section 2508 mandates a phase-in of air bags as the exclusive means of complying with the automatic crash protection requirements, it is necessary to amend the reporting requirements to require manufacturers to report what percentage of their production is equipped with air bags certified as complying with the crash protection requirements. The agency proposed to amend Part 585 in this manner.

Ford requested that the proposed reporting requirements apply only to vehicle manufacturers that do not provide inflatable restraint systems in 100 percent of cars (or trucks) during the applicable phase-in. That company stated that it expects 100 percent of its affected vehicles to be equipped with inflatable restraints during the two phase-in periods. Ford suggested that any manufacturer which did not file under part 585 would effectively be claiming that 100 percent of its affected vehicles met the inflatable restraint criteria. Honda provided a similar comment, suggesting that the agency accept a manufacturer's statement if the manufacturer achieves 100 percent compliance.

NHTSA agrees that a simplified reporting option should be provided for manufacturers that achieve 100 percent compliance. Under the final rule, such a manufacturer may submit a summary statement, signed by an official representative, that all affected vehicles comply. The agency believes that it would be inappropriate to accept the lack of a filing as a statement of 100 percent compliance, since there could be a number of explanations for lack of receipt of a filing, e.g., a filing might have become lost in the mail.

E. Other Issues

1. Due Care

Standard No. 208 includes a provision which states that a vehicle shall not be deemed to be in noncompliance with the standard if its manufacturer establishes that it did not know in the exercise of due care that such vehicle is not in conformity with the standard. Advocates commented that this provision amounts to a disclaimer and employs a subjective standard that is at odds with the clear wording of the National Traffic and Motor Vehicle Safety Act and with judicial interpretations of that Act. That organization argued that the agency should decline to extend the provision to the amended portions of Standard No. 208 or, alternatively, should issue a separate final rule deleting the "due care" provision from the standard entirely.

As noted by Advocates, the "due care" provision was added to Standard No. 208 in 1986. This provision has been a part of the agency's air bag provision since that time. The agency is currently considering, as indicated by its Semi-Annual Regulatory Agenda, proposing to delete the provision from Standard No. 208. See 58 FR 24722, April 26, 1993.

Since NHTSA did not propose to delete the "due care" provision in the NPRM, Advocates' request is outside the scope of this rulemaking. The agency will continue to consider whether to issue an NPRM to delete the provision.

2. Auto Recycling

ISRI stated that air bag canisters create hazards to auto recycling. That organization stated that the detonation of air bag inflator canister inside an auto shredder could easily ignite the air/hydrocarbon mixture present there and cause a significant explosion, as well as liberate sodium azide, which is classified as a toxic substance by the Environmental Protection Agency (EPA), into the air or onto the ground. ISRI stated that NHTSA should establish a regulatory requirement, as part of this rulemaking, that requires air bag and/or auto manufacturers to take steps to create incentives for the removal and recycling of air bag canisters prior to the delivery of auto hulks for shredding.

ISRI stated that perhaps the most effective and market-based solution would be to require air bag or auto manufacturers to buy back air bag canisters from suppliers of auto hulks prior to delivery for recycling. That organization stated that under the proposed program, auto dismantlers would willingly remove air bag canisters for resale to anyone willing to pay them an amount necessary to justify their expense to remove them. ISRI stated that an alternative canister repurchase plan could be formulated to place on the air bag manufacturers the duty to buy back their own canisters.

NHTSA notes that the automotive industry and the Society of Automotive Engineers recommend that every air bag be deliberately deployed before the vehicle is shredded (i.e., "fired" using a remote test connection) thereby

rendering the inflator/module harmless. Further, the automotive industry is providing technical instructions in current service manuals regarding the proper disposal techniques of air bags, which is the deliberate deployment before the vehicle is shredded.

Auto recyclers can thus avoid any hazards by deploying air bags before shredding. NHTSA also observes that ISRI's recommendation to require air bag or vehicle manufacturers to buy back air bags is outside the scope of this rulemaking. Moreover, NHTSA does not have the authority to establish such requirements.

3. Definition of Inflatable Restraint System

The agency proposed a provision that would define inflatable restraint system as an air bag that is concealed in the steering wheel or in the instrument panel until it is activated in a crash. GM commented that the incorporation of specific air bag locations into the definition would restrict future restraint system design practices. The agency does not wish to unnecessarily restrict future air bag designs. Therefore, it has removed the specified locations from the definition included in the final rule.

4. Air Bag Alone Test Requirements

BMW noted that the agency's occupant crash protection requirements must be met both with the air bag alone and with the combination of the air bag and a safety belt. That manufacturer argued that this results in major tests costs. BMW argued that the air bag alone requirement exists because NHTSA regarded the air bag as a primary and not supplemental restraint system and that the proposal apparently revises this agency view. It recommended that the agency only retain the combination test requirement. However, while NHTSA agrees that it is very important for occupants to wear their safety belts in vehicles equipped with air bags, the agency also believes it is important to require occupant crash protection in situations where occupants are not wearing safety belts. Therefore, the agency is not adopting BMW's suggestion.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts associated with this rulemaking action. Based on that consideration, NHTSA has determined that this final rule is not "major" within the meaning of Executive Order 12291, because the costs should be well below the $100 million threshold for categorizing a rule as "major." However, this final rule is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of the level of public interest. Accordingly, NHTSA has prepared a final regulatory evaluation (FRE), a copy of which has been placed in the docket for this rulemaking action.

The FRE may be briefly summarized as follows. The agency believes that almost all manufacturers were planning on using air bags in their vehicles produced during the model years affected by this final rule. Hence, the costs associated with this final rule will be very small. There will be some minor costs associated with the labeling requirements and owner's manual requirements, but again the agency believes that most manufacturers are already labeling the sun visors in their cars equipped with air bags and providing information in the owner's manuals. The FRE estimates the consumer cost of each label to be $0.06 to $0.11. Since the final rule requires two or three labels per vehicle, the consumer cost for the labels would be $0.12 to $0.33. The FRE also provides estimates of the benefits and costs of an all air bag fleet compared to an all automatic belt fleet.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Final stage manufacturers and alterers are the small entities primarily affected by this final rule. However since the agency believes that all the major manufacturers (which provide the incomplete or complete vehicles to final stage manufacturers and alterers) were planning to install air bags voluntarily, and since it also believes that air bags will be available in all or nearly all models during the 80 percent phase-in year for light trucks (thereby enabling alterers and final stage manufacturers to obtain vehicles already equipped with air bags), the final rule will not have any significant effect on final stage manufacturers or alterers. Moreover, since the final rule will not significantly affect the price of passenger cars or light trucks, it will not have any significant economic impact on small businesses, small organizations, and small governmental units which purchase these vehicles.

National Environmental Policy Act

NHTSA analyzed the environmental issues associated with air bags as part of its requirements for automatic crash protection in new cars (49 FR 28962; July 17, 1984) and light trucks and vans (56 FR 12472; March 26, 1991), and determined that the widespread introduction and use of air bags would not have a significant impact on human health or the environment. Based on those analyses, which were conducted pursuant to the National Environmental Policy Act, NHTSA has determined that today's final rule will not have a significant impact on human health or the environment. A discussion related to the environmental issues associated with air bags can be found in Docket No. 74–14; Notice 36 (for passenger cars) and Docket No. 74–14; Notice 70 (for light trucks and vans). In addition, EPA submitted comments on the environmental aspects of the NPRM. NHTSA's response to EPA, as well as EPA's incoming letter, has been placed in the docket.

Executive Order 12612 (Federalism)

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule have been approved by the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35, under OMB No. 2127–0535. As noted earlier, the final rule incorporates a simplified reporting option for manufacturers that achieve 100 percent compliance.

Civil Justice Reform

This final rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for

reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 571 and 585 are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S4.1.4; removing existing S4.1.5 through S4.1.5.2(d), inclusive, and adding a new S4.1.5 through S4.1.5.3; removing existing S4.2.6 and adding a new S4.2.6 through S4.1.6.2; revising S4.5.1; revising S4.5.3.1; and adding S12 through S12.7.3(e). The revised and added paragraphs read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.1.4 *Passenger cars manufactured on or after September 1, 1989, but before September 1, 1996.*

* * * * *

S4.1.5 *Passenger cars manufactured on or after September 1, 1996.*

S4.1.5.1 *Frontal/angular automatic protection system.*

(a) Each passenger car manufactured on or after September 1, 1996 shall:

(1) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1 by means that require no action by vehicle occupants;

(2) At any front designated seating positions that are not "outboard designated seating positions," as that term is defined at 49 CFR 571.3, and at any rear designated seating positions that are not "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 and S7.2 of this standard; and

(3) At each front designated seating position that is an "outboard designated seating position," as that term is defined at 49 CFR 571.3, and at each rear designated seating position that is a "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard, and, in the case of the Type 2 seat belt assemblies installed at the front outboard designated seating positions, meet the frontal crash protection requirements with the appropriate anthropomorphic test dummy restrained by the Type 2 seat belt assembly in addition to the means that requires no action by the vehicle occupant.

(b) For the purposes of this section, an *inflatable restraint system* means an air bag that is activated in a crash.

S4.1.5.2 *Passenger cars manufactured on or after September 1, 1996 and before September 1, 1997.*

S4.1.5.2.1 The amount of passenger cars complying with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position shall be not less than 95 percent of the manufacturer's total production of passenger cars manufactured on or after September 1, 1996, and before September 1, 1997. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.5.2.2 *Passenger cars produced by more than one manufacturer.*

S4.1.5.2.2.1 For the purpose of calculating the production of passenger cars by each manufacturer during the period specified in S4.1.5.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.1.5.2.2.2:

(a) A passenger car that is imported into the United States shall be attributed to the importer.

(b) A passenger car manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.1.5.2.2.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to part 585 of this chapter, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.1.5.2.2.1.

S4.1.5.3 *Passenger cars manufactured on or after September 1, 1997.* Each passenger car manufactured on or after September 1, 1997 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.2.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, which is manufactured on or after September 1, 1997, shall comply with the requirements of S4.1.5.1 of this standard (as specified for passenger cars), except that walk-in van-type trucks and vehicles designed to be sold exclusively to the U.S. Postal Service may meet the requirements of S4.2.1.1 or S4.2.1.2 of this standard instead of the requirements of S4.1.5.1.

S4.2.6.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998.*

S4.2.6.1.1 The amount of trucks, buses, and multipurpose passenger vehicles complying with the requirements of S4.1.5.1(a)(1) of this standard by means of an inflatable restraint system shall be not less than 80 percent of the manufacturer's total combined production of subject vehicles manufactured on or after September 1, 1997 and before September 1, 1998. Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998, whose driver's seating position complies with S4.1.5.1(a)(1) by means of an inflatable restraint system and whose right front passenger's seating position is equipped with a manual Type 2 seat belt assembly that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2 of this standard, shall be counted as a vehicle complying with

S4.1.5.1(a)(1) by means of an inflatable restraint system. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.6.1.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer.*

S4.2.6.1.2.1 For the purpose of calculating the production by each manufacturer during the period specified in S4.2.6.1.1, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.6.1.2.2:

(a) A vehicle that is imported into the United States shall be attributed to the importer.

(b) A vehicle manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.6.1.2.2 A truck, bus, or multipurpose passenger vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to part 585 of this chapter, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.2.6.1.2.1.

S4.2.6.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998.* Each truck, bus, or multipurpose vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care the such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

(a) Air bag maintenance or replacement information. If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capital and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor. If some regular maintenance or replacement of the inflatable restraint system(s) in a vehicle is recommended by the vehicle manufacturer, the owner's manual shall also set forth the recommended schedule for maintenance or replacement.

(b) Label on sun visor above front outboard seating positions equipped with inflatable restraint.

(1) For vehicles manufactured on or after September 1, 1994, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(3), this label shall read:

CAUTION

TO AVOID SERIOUS INJURY:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(2) The color of the lettering on the label shall contrast with the background of the label. No other information shall appear on the same side of the sun visor to which the label is affixed. Except for an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

(3) If the vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the statement "Do not install rearward-facing child seats in any front passenger seat position" may be omitted from the label.

(c) Air bag alert label. If the label required by S4.5.1(b) for a sun visor (other than the sun visor for the driver seating position) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed either to that visor so that the label is visible when the visor is in that position or to the cover of the air bag for that seating position, at the option of the manufacturer. An air bag alert label affixed to an air bag cover pursuant to this paragraph shall read "Air Bag. See Sun Visor." An air bag alert label affixed to an sun visor pursuant to this paragraph shall read "Air bag. See Other Side." The color of the lettering on the label shall contrast with the background of the label.

(d) At the option of the manufacturer, the requirements in S4.5.1(b) and S4.5.1(c) for labels that are permanently affixed to specified parts of the vehicle may instead be met by permanent marking or molding of the required information.

(e) Information to appear in owner's manual. The owner's manual for any vehicle equipped with an inflatable restraint system shall include a description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and a lap/shoulder belt at one or both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the label identifying the air bag on the steering wheel and instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

* * * * *

S4.5.3.1. An automatic belt that provides only pelvic restraint may not be used pursuant to S4.5.3 to meet the

requirements of an option that requires a Type 2 seat belt assembly. An automatic belt may not be used pursuant to S4.5.3 to meet the requirements of S4.1.5.1(a)(3) for a Type 2 seat belt assembly at any seating position equipped with an inflatable restraint system pursuant to S4.1.5.2, S4.1.5.3, S4.2.6.1, or S4.2.6.2 of this standard.

* * * * *

S12. *Temporary Exemption from Requirement for Inflatable Restraint System.*

S12.1 *Scope.* This section establishes procedures for filing and processing applications for temporary exemption from the requirements in this standard that vehicles be equipped with inflatable restraint systems.

S12.2 *Definitions.*

Line means a name that a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A *line* may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

S12.3 *Standard of review.* In order to receive a temporary exemption from the inflatable restraint requirement, a vehicle manufacturer must demonstrate in its application that there has been a disruption in the supply of one or more inflatable restraint system components, or a disruption in the use and installation by the manufacturer of any such component due to unavoidable events not under the control of the manufacturer, which will prevent a manufacturer from meeting its anticipated production volume of vehicles with inflatable restraint systems.

S12.4 *Exemption applications—General requirements.* Each application for a temporary exemption from the inflatable restraint requirements must—

(a) Be written in the English language;

(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(c) State the full and address of the manufacturer, the nature of its organization (individual, partnership, corporation, etc.), and the name of the State or country under the laws of which it is organized;

(d) Identify the motor vehicle line or lines for which the temporary exemption is being sought;

(e) Set forth in full the data, views, and arguments of the manufacturer that would support granting the temporary exemption, including the specific information required by S12.5; and

(f) Specify and segregate any part of the information and data submitted in the application that should be withheld from public disclosure in accordance with part 512 of this chapter.

S12.5 *Exemption applications—Specific content requirements.* Each application for a temporary exemption from the inflatable restraint requirement must include:

(a) A clear and specific identification of any component in the inflatable restraint system that has become unavailable due to circumstances beyond the manufacturer's control, and a diagram showing the location of such component within the restraint system and within the vehicle;

(b) A clear and specific explanation of the cause or causes of the disruption in the supply of the component, and a showing that such disruption is beyond the control of the manufacturer;

(c) An estimate of the length of time that will be needed to correct the disruption and again incorporate the subject components into current production, or an explanation of why it is not possible to provide such an estimate;

(d) A complete statement of the bases for the manufacturer's belief that NHTSA should grant a temporary exemption in response to this application;

(e) An unconditional statement by the manufacturer that it will recall every vehicle for which a temporary exemption is requested in the application; to install all missing inflatable restraint systems;

(f) A plan setting forth steps the manufacturer will take to ensure that as many exempted vehicles as possible will be returned for installation of missing inflatable restraint systems;

(g) A proposed reasonable period of time after the disruption in the supply of inflatable restraint system components is corrected that the manufacturer estimates will ensure a sufficient quantity of components for both anticipated production and retrofit of those vehicles for which a temporary exemption is requested in the application, so that the vehicle manufacturer can recall those vehicles for which a temporary exemption is requested and install inflatable restraint systems in them, together with a demonstration of why the manufacturer believes this proposed period of time is reasonable for completing this recall, or an explanation of why it is not possible to provide such an estimate;

(h) A proposed date for termination of the exemption;

(i) A proposed date by which all exempted vehicles will have been recalled and had inflatable restraints installed (assuming owners returned their vehicles in a timely matter in response to a first notice by the manufacturer), or an explanation of why it is not possible to provide such an estimate.

S12.6 *Processing an application for a temporary exemption.* (a) NHTSA will process any application for temporary exemption that contains the information specified in S21.4 and S12.5. If an application fails to provide the information specified in S12.4 and S12.5, NHTSA will not process the application, but will advise the manufacturer of the information that must be provided if the agency is to process the application.

(b) Notice of each application for temporary exemption shall be published in the **Federal Register**.

(c) NHTSA will issue its decision to grant or deny the requested temporary exemption not later than 15 days after the agency receives a complete petition, as defined in paragraph (a). However, a failure to issue a decision within this time does not result in a grant of the petition.

(d) Notice of each decision to grant or deny a temporary exemption, and the reasons for granting or denying it, will be published in the **Federal Register**.

(e) The Administrator may attach such conditions as he or she deems appropriate to a temporary exemption, including but not limited to requiring manufacturers to provide progress reports at specified times (including, as appropriate and to the extent possible, estimate of dates and times concerning when a supply disruption will be corrected and when recall will take place) and requiring manufacturers to take specific steps to ensure that as many exempted vehicles as possible will be returned for installation of missing inflatable restraint systems.

(f) Unless a later effective date is specified in a notice announcing an agency decision to grant a temporary exemption, a temporary exemption from the inflatable restraint requirement will become effective upon the date the decision is issued.

S12.7 *Labels and written notice announcing temporary exemption.*

S12.7.1 It shall be a condition of every temporary exemption from the inflatable restraint requirement that the manufacturer of exempted vehicles comply with the provisions of S12.7.2 and S12.7.3.

S12.7.2 (a) The manufacturer of any vehicle granted a temporary exemption from the inflatable restraint requirement shall affix a label within the passenger compartment of such vehicle. The label

shall set forth the following information in block capital letters and numerals not less than three thirty-seconds of an inch high:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. (insert number assigned by NHTSA).

(b) This label shall not be removed until after the vehicle manufacturer has recalled the vehicle and installed an inflatable restraint system at those seating positions for which it was granted an exemption.

S12.7.3 The manufacturer of any vehicle that is delivered without an inflatable restraint system, pursuant to a temporary exemption granted under this section, shall, at the time of delivery of the vehicle, provide a written notice to the dealer to whom the vehicle is delivered. The manufacturer shall also provide a written notice by registered mail to the first purchaser of the vehicle for purposes other than resale, within two weeks after purchase Unless otherwise provided for by the Administrator in the exemption, such notice shall provide the following information:

(a) This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).

(b) The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).

(c) The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the manufacturer's control.

(d) The manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.

(e) If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

* * * * *

PART 585—AUTOMATIC RESTRAINT PHASE-IN REPORTING REQUIREMENTS

3. The authority citation for part 585 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

4. Section 585.1 is revised to read as follows:

§ 585.1 Scope.

This part establishes requirements for manufacturers of passenger cars to submit reports, and to maintain records related to the reports, concerning the number of cars equipped with inflatable restraint systems in compliance with the requirement of S4.1.5.2 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This part also establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208 and the number of such vehicles equipped with inflatable restraint systems in compliance with the requirement of S4.2.6.1 of Standard No. 208.

5. Section 585.2 is revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a vehicle manufacturer has complied with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production and to install an inflatable restraint system that provides automatic crash protection in a specified percentage of the manufacturer's annual production.

6. Section 585.3 is revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars and to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

7. Section 585.5 is revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements—Passenger cars.* Within 60 days after the end of the production year ending August 31, 1997, each manufacturer that manufactured any passenger cars for sale in the United States shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirement of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 95 percent of its cars manufactured during that production year.

(b) *General reporting requirements—Light trucks, buses, and multipurpose passenger vehicles.*—(1) *Automatic crash protection.* Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31 1997, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured for operation by persons with disabilities, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i) Vehicles manufactured in two or more stages;

(ii) Walk-in van-type trucks;

(iii) Vehicles designed to be sold exclusively to the U.S. Postal Service;

(iv) Vehicles manufactured for operation by persons with disabilities; and/or

(v) Vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) *Inflatable restraint system that provides automatic crash protection.* Within 60 days after the end of the production year ending August 31, 1998, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 80 percent of such vehicles manufactured during

that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i) Walk-in van-type trucks; and/or

(ii) Vehicles designed to be sold exclusively to the U.S. Postal Service.

(c) Each report submitted in compliance with paragraphs (a), (b)(1), or (b)(2) of this section shall:

(1) Identify the manufacturer;

(2) State the full name, address, and title of the official responsible for preparing the report:

(3) Identify the production year for which the report is filed;

(4) Provide the information specified in paragraph (d) of this section;

(5) Be written in the English language;

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; and

(7)(i) In the case of a report filed pursuant to paragraph (a) of this section, expressly state whether the manufacturer has complied with the requirement of S4.1.5.2 of Standard No. 208 (§ 571.208 of this chapter);

(ii) In the case of a report filed pursuant to paragraph (b)(1) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter); and

(iii) In the case of a report filed pursuant to paragraph (b)(2) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.6.1 of Standard No. 208 (§ 571.208 of this chapter).

(d) *Report content*—(1) *Passenger cars.* Each manufacturer that certifies that all of its passenger cars for the production year ending August 31, 1997 comply with S4.1.5.1(a)(1) of Standard No. 208 (49 CFR 571.208) by means of an inflatable restraint system at the driver's and right front passenger's position shall so state. Each other manufacturer shall submit the information specified below.

(i) *Basis for phase-in production goals.* Each manufacturer shall report the total number of passenger cars it manufactured for sale in the United States for the production year ending August 31, 1997.

(ii) *Production.* Each manufacturer shall report the number of passenger cars manufactured for sale in the United States for the production year ending August 31, 1997 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection at both the driver's and the right front passenger's seating position.

(iii) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.1.5.2.2 of § 571.208 of this chapter shall:

(A) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(B) Report the number of cars covered by each such contract.

(2) *Trucks, buses, and multipurpose passenger vehicles.* Each manufacturer that certifies that all of its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured during the production year ending August 31, 1998 comply with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) by means of an inflatable restraint system at the driver's and right front passenger's position shall so state. Each other manufacturer shall submit the information specified below.

(i) *Automatic crash protection*—(A) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years, or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during each of the three preceding production years must report the number of trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less it manufactured during the production year for which the report is filed. However, manufacturers are not required to report any information with respect to those vehicles that are manufactured in two or more stages, walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured for operation by persons with disabilities, and/or vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(B) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (d)(2)(i)(B)(*1*) through (d)(2)(i)(B)(*3*) of this section, inclusive, with respect to its trucks, buses, and multipurpose vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(*1*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with automatic seat belts and the seating positions at which those belts are installed;

(*2*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(*3*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(C) *Vehicled produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.5.6.2 of § 571.208 of this chapter shall:

(1) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(2) Report the number of vehicles covered by each such contract.

(ii) *Inflatable restraint system that provides automatic crash protection*—(A) *Basis for phase-in production goals.* Each manufacturer shall report the total number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for the production year ending August 31, 1998. However, manufacturers are not required to report any information with respect to those vehicles that are walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service.

(B) *Production.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds that it manufactured for sale in the United States for the production year ending August 31, 1998 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection.

(C) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.6.1.2 of § 571.208 of this chapter shall:

(1) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(2) Report the number of vehicles covered by each such contract.

7. Section 585.6 is revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5 until December 31, 1999.

Issued on August 30, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–21419 Filed 9–1–93; 3:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 169
Thursday, September 2, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket 91-016-2]

Chicken Disease Caused by Salmonella Enteritidis; Public Hearing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearing.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public hearing on the proposed rule on chicken disease caused by *Salmonella enteritidis* that we published in the Federal Register on August 2, 1993. The public hearing will be held in Washington, DC, on September 7, 1993.

DATES: The public hearing will be held on Tuesday, September 7, 1993, from 11 a.m. until 3 p.m.

ADDRESSES: The public hearing will be held in room 3501, South Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. John Mason, Director, Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436-4363.

SUPPLEMENTARY INFORMATION: This public hearing is being held on the proposed rule on chicken disease caused by *Salmonella enteritidis* (Docket No. 91-016-1, 58 FR 41048-41061), published August 2, 1993. The comment period on the proposed rule ends October 1, 1993. The rule proposes to make the following major changes to the current *Salmonella enteritidis* (SE) regulations: (1) Exempting certain flocks from the testing requirements of the regulations, if the flocks are participating in certain voluntary *Salmonella* testing programs; (2) removing requirements for testing blood and internal organ samples from Test Flocks; (3) adding requirements to test Study Flocks for SE by testing egg samples; (4) adding requirements to trap and test rodents; (5) substituting the terms SE-positive status (Environment) and SE-positive status (Eggs) for the terms Test status and Infected status, and (6) allowing SE-Positive houses and flocks to be released from regulation only through depopulation, cleaning, and disinfection, not through negative testing.

The public hearing will be held on Tuesday, September 7, 1993, in room 3501, South Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in with their name and organization, to establish a record for the hearing.

The public hearing will begin at 11 a.m. and is scheduled to end at 3 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Done in Washington, DC, this 31st day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-21586 Filed 9-1-93; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 93-66]

Community Support Requirements for Insurance Company and Credit Union Members of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board (Finance Board) is requesting public comment to assist it in amending the regulation creating its Community Support Program (CSP). The CSP implements section 710(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which requires all members of the Federal Home Loan Bank System (FHLBank System) to meet standards of community investment or service in order to maintain continued access to long-term FHLBank System advances. To date, the Finance Board has reviewed for Community Support purposes only members covered by the Community Reinvestment Act of 1977 (CRA) because the existing regulation contains minimal guidance as to reviewing members not covered by CRA. The Finance Board intends to amend the regulation to specify procedures to review members not covered by CRA, specifically, insurance company and credit union members, and is requesting public comment to assist in developing those procedures.

DATES: Comments must be received on or before November 1, 1993.

ADDRESSES: Comments should be sent to: Elaine L. Baker, Associate Director and Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408-2821, or Sylvia Martinez, Director, Housing Finance Directorate, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. General

FIRREA, Public Law No. 101–73, 103 Stat. 183, established the Finance Board as an independent agency in the executive branch of the federal government. It is the successor agency to the Federal Home Loan Bank Board with respect to oversight of the FHLBanks.

Virtually all savings associations supervised by the Office of Thrift Supervision are members of the FHLBank System, as are many state chartered savings banks supervised by the Federal Deposit Insurance Corporation. The membership also includes insurance companies, which have been eligible for membership since the creation of the FHLBank System in 1932. With the passage of FIRREA, membership was opened as well to commercial banks and credit unions that make long-term home mortgage loans, subject to financial soundness and home financing qualifications.

Section 710 (c) of FIRREA added a new section 10(g) to the Federal Home Loan Bank Act of 1932 (Bank Act), 12 U.S.C. 1430(g), as follows:

(g) Community Support Requirements—

(1) In General.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

(2) Factors To Be Included.—The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers.

To implement this section, the Finance Board issued a regulation on November 21, 1991 (56 FR 58639), preceded by both an advance notice of proposed rulemaking (56 FR 387) and a proposed rule (56 FR 26346), which established a Community Support Program for the FHLBank System (12 CFR part 936).

The regulation defines "Community Support" in § 936.1 as follows:

(1) Extensions of credit for purchase, construction, or rehabilitation of owner-occupied and rental housing for households whose incomes do not exceed 115 percent of the median income for the area, with demonstrable efforts to finance housing for households whose incomes do not exceed 80 percent of the area median income and for households whose incomes do not exceed 50 percent of the area median income;

(2) Extensions of credit to finance commercial and economic development activities that benefit very low-, low- or moderate-income neighborhoods, including very low-, low-, and moderate-income minority neighborhoods and rural communities;

(3) Development and extension of other loan products, financial services and programs to address community credit needs, including those described in Comprehensive Housing Affordability Strategy Plans, 24 CFR part 91, or as identified by FHLBank Advisory Councils;

(4) Marketing plans and related outreach activities targeted to households in minority, very low-, low- or moderate-income, or rural communities, including first-time homebuyers;

(5) Active participation in loan consortia, regional lending activities, and similar efforts that benefit very low-income and low- or moderate-income households or which further the activities described in paragraphs (i) (1) through (4) of this section, both within and outside a member's usual market areas and communities;

(6) Any additional loan products, financial services programs or activities that further the items described in paragraphs (i) (1) through (5) of this section; and

(7) In the case of institutions not covered by CRA, such as credit unions, loan products, financial services, programs or activities that further the items described in paragraphs (i) (1) through (5) of this section.

12 CFR 936.1.

Under the requirements of the Program, all members of the FHLBank System are to be revised by the Finance Board for their record of Community Support approximately every two years. If a member is found not to have met the Community Support standard, the Finance Board asks the member to create, with the help of its FHLBank, a one-year Community Support Action Plan (Action Plan) to improve its performance under the standard. As indicated in § 936.7 of the regulation, members that refuse to participate in the Community Support review or, if requested, to create an Action Plan the Finance Board can approve, or that fail to substantially meet the goals of an Action Plan they have implemented may lose access to long-term FHLBank System advances.

12 CFR 936.7.

II. Review Under the Community Support Program

Members selected for Community Support review are requested to provide the Finance Board with a Community Support Statement (Statement). Completing the Statement involves filling out a one-page form and attaching the following four items: (1) The public disclosure portion of the member's most recent evaluation under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 (CRA evaluation); (2) a description of how the member assists first-time homebuyers; (3) if applicable, a summary of any final administrative or judicial rulings within the preceding two years for fair lending, including fair housing, violations; and (4) any additional information the member wishes to include that relates to its Community Support performance.

The CRA evaluation portion of the Community Support Statement is a critical component of the Community Support review. Through the CRA evaluation, the Finance Board is able to rely on an expert, objective on-site assessment of performance that covers significant aspects of Community Support. In the preamble to the Community Support regulation, the Finance Board indicated that it would place primary emphasis on a member's CRA evaluation and would focus in particular on the assessment factors within the CRA evaluation that most directly relate to Community Support.

The Finance Board began reviewing members of the FHLBank System pursuant to the Community Support requirements in February 1992. To date, the Finance Board has reviewed over 1,800 FHLBank System members. Only members covered by the CRA have been reviewed for Community Support thus far, because the existing review procedures rely on members' ability to supply CRA evaluations. Therefore, only savings associations, savings bank and commercial bank members of the FHLBank System have been reviewed. No credit union or insurance company FHLBank System members have been reviewed because they are not subject to or examined for CRA.

III. Treatment of Members Not Covered by CRA Under the Existing Regulatory Provisions

The existing Community Support regulatory provisions offer minimal guidance with regard to Community Support review procedures for members not covered by the CRA. Specifically, the regulation indicates that a Community Support Statement shall include,

(3) In the case of credit unions and other members who are not subject to the Community Reinvestment Act, a detailed description of the member's Community Support activities.

12 CFR 936.3(b).

The preamble to the regulation explains this paragraph by stating that,

(t)he small group of members not covered by CRA, such as credit unions, will be required to submit a written statement explaining how they identify the credit needs of their members and how their loan products and services meet Community Support standards. The Board recognizes the unique circumstances of insurance companies and will work with these members on a case-by-case basis to fulfill the basic purpose of this Part as to these members.

56 FR 58639.

The regulation's only other reference to members not covered by CRA is in the definition of "Community Support":

(7) In the case of institutions not covered by CRA, such as credit unions, loan products, financial services, programs or activities that further the items described in paragraphs (i)(1) through (5) of this section.

12 CFR 936.1(i)(7).

The Finance Board recognizes that the minimal guidance in the regulation with regard to Community Support compliance by members not covered by CRA has created ambiguity on the part of both current and potential FHLBank System members not covered by CRA. Therefore, the Finance Board proposes to amend the regulation to specify the Community Support requirements for such members.

IV. Issues for Consideration

In preparing to promulgate a proposed rule on Community Support requirements for members not covered by CRA, the Finance Board seeks the broadest possible public comment on all aspects of the various relevant issues. All interested parties, including insurance companies, credit unions, community groups, FHLBanks and their Advisory Councils, lenders, public interest groups, current and prospective FHLBank System members, trade associations, federal financial regulators, state and local government agencies, other financial service providers, and private citizens are encouraged to comment.

The questions presented below (numbered consecutively 1 through 31 for ease of reference) are intended to elicit comments on all significant issues. However, the list is not intended to be exclusive. The Finance Board seeks comments on any and all relevant issues.

A. Definition of "Community Support" for Members Not Covered by CRA

The Finance Board defined the term "Community Support" (§ 936.1) to encompass and encourage a wide variety of efforts to benefit communities, particularly very low-, low- and moderate-income, minority and rural households. The existing definition includes: The design and offering of loan products; actual extensions of credit; and, marketing and outreach efforts. Participation in consortia is highlighted as well in order to give credit for Community Support activities by a member both within and outside its CRA-delineated community.

The definition of "Community Support" for members not covered by CRA, specifically, "loan products, financial services, programs or activities" that further the items described in the definition of "Community Support" (12 CFR 936.1 (i)(7)), provides little guidance, given its general nature. Therefore, the Finance Board seeks comment on what specifically should constitute "Community Support" for these members.

The answer to the first question below is central to the amendment process and directly affects the remainder of the questions regarding how "Community Support" should be defined for members not covered by CRA. While various approaches to the Community Support review for members not covered by CRA may be attractive from a policy perspective, the Finance Board must ensure that members will be able to comply. Therefore, the Finance Board must caution that all the approaches discussed below may not turn out to be equally available once all impediments to compliance by insurance company and credit union members are known.

1. Are there statutory or regulatory limitations or restrictions that would impede the Finance Board from applying existing Community Support lending and other requirements to insurance company and/or credit union members (for example, credit union charter restrictions on lending only to members, or state law limitations on investments by insurance companies)?

2. Should there be a different definition of Community Support for insurance company and credit union members than for all other FHLBank System members? Should there be different definitions for insurance company versus credit union members?

3. How should "Community Support" be defined for FHLBank System members not covered by CRA, specifically, insurance company and credit union members? What activities should serve to meet the Community Support standard for these members?

B. Form of Compliance

The Bank Act section which creates the Community Support requirement lists CRA performance as one of two factors which the Finance Board is to take into account in its implementing regulations for Community Support. 12 U.S.C. 1430(g). In keeping with the statutory emphasis, the Finance Board relies heavily on the CRA evaluation in conducting a member's Community Support review.

Besides furnishing an objective third-party assessment of community lending efforts based on an on-site examination, using the CRA also ensures that a member's financial condition, size, any legal impediments and local conditions are all taken into account in evaluating the member's efforts. Using the CRA evaluation also minimizes the paperwork burden for the member in complying with the review procedures.

Since insurance company and credit union members are not covered by CRA, the Finance Board will not be able to rely on any CRA evaluation in conducting a Community Support review of one of these members.

Approaches for dealing with the absence of a CRA evaluation for insurance company and credit union members could include the Finance Board's requiring that these members nevertheless comply with CRA criteria or the Finance Board's establishing a parallel CRA requirement adapted to the institutional differences of these members. One issue the Finance Board would need to address involves the CRA concept of a delineated community. While meeting the credit needs of a delineated community is central to the CRA requirements, the Community Support regulation focuses not on meeting the needs of a particular community, but rather on meeting the needs of underserved households, specifically, very low-, low- and moderate-income, minority and rural households. Insurance company and credit union members are not likely to have a designated geographic community comparable to the CRA concept of "community" (with the exception of credit unions with geographic common bonds), and both may operate on a national scale. At the same time, credit unions operate within lending limitations related to their fields of membership.

4. Since the statute creating the Community Support Program requires the Finance Board to take into account CRA, should the Finance Board require

insurance company and credit union members to comply with CRA or some equivalent of CRA? How would compliance be assessed?

5. Should the Finance Board require members that are not covered by CRA to define a community for Community Support purposes? Is that a workable concept for these members? Are there Community Support policy reasons to do so?

6. Would requiring the members that are not covered by CRA to delineate a community and then focus their Community Support efforts on meeting that community's needs create unnecessary work for the members, result in artificial "communities", and needlessly dilute investments with regard to Community Support's targeted households?

Another approach for dealing with the absence of a CRA evaluation for insurance company and credit union members would be to apply entirely separate criteria, making no attempt to subject these members to CRA or CRA-like criteria. Such an approach might be structured so that the absence of a third-party on-site examination is minimized.

7. Should the Finance Board designate certain activities as appropriate standards for evaluating those members not covered by CRA, with evidence of participation in such activities substituting for the CRA portion of the Community Support Statement provided by CRA-covered members?

A national community reinvestment fund approach as described in questions 8 through 13 below might capitalize on the fact that insurance company and credit union members are not covered by CRA. Specifically, because insurance company and credit union members are not required under CRA to focus on the credit needs of a particular community, investments could be directed through the fund to underserved households and communities or to support, for example, new Department of Housing and Urban Development initiatives, without regard to location within or outside the members' communities.

8. Should the Finance Board, the FHLBank System, or some other organization create some form of national community reinvestment fund in which members not subject to CRA could invest, with evidence of such investment substituting for the CRA portion of the Community Support Statement?

9. What should be considered approved uses for such a fund?

10. How could the fund coordinate its activities with proposed community development and economic empowerment legislation, such as the Community Development Banking and Financial Institutions Act of 1993, assuming this legislation is enacted?

11. Who should administer such a fund? (For example, should the Finance Board or the FHLBanks administer such a fund, or should the Finance Board consider the feasibility of using experienced non-profit intermediaries to do so?)

12. Instead of creating a new fund, should the Finance Board encourage participation by insurance company and credit union members in similar ventures managed by experienced non-profit intermediaries if all uses of invested funds would meet Community Support standards?

13. How should the appropriate level of investment in a fund by the insurance company or credit union member be determined? For example, should minimum percentages based on asset size be established?

14. Depending on the Community Support approach taken, what information should be required to be reported by members not covered by CRA?

Besides supplying a CRA evaluation, members reviewed for Community Support are required to provide information as to their efforts to assist first-time homebuyers, and to indicate whether there have been any final judgments of a fair lending nature against them within the previous two years.

15. Is there any reason why members not covered by CRA should not be subject to the other Statement information requirements applicable to CRA-covered members, specifically, providing information on assistance to first-time homebuyers and reporting any final judgments in the last two years related to fair lending violations? If not, why? If separate standards are deemed appropriate, how should such separate standards be defined?

C. Measure of Degree of Commitment of Resources

CRA evaluations take into account the examined institution's financial condition, size, any legal impediments, and local economic conditions in assessing the institution's record of meeting its community's credit needs. In so doing, the CRA evaluation provides a context in which to evaluate the individual institution's performance.

In utilizing the CRA evaluation as a substantial part of the Community Support review, the Finance Board incorporates these factors into its assessment as well. Since insurance company and credit union members are not required to undergo CRA examination, the Finance Board has no similar assessment on which to rely in reviewing these members.

16. How should the Finance Board establish a context for assessing insurance company and credit union members' efforts, given that the Finance Board does not have a CRA evaluation on which to rely for this perspective?

17. Are there reports currently prepared by these members which would provide such a context?

18. Should the Finance Board require insurance company and credit union members to report information regarding their financial condition and size, any legal impediments, and local economic conditions so that the Finance Board may assess the degree of commitment by the member in the context of its resources and capabilities?

19. If such information is solicited, how should the information be verified?

20. Should the Finance Board consider requiring that a specific percentage of insurance company and/or credit union members' assets be directed to community investment/Community Support-related activities (or some similar requirement)? If so, what would be an appropriate threshold? A specified percentage approach would make Community Support a far less flexible standard with regard to members not covered by CRA, but would at the same time provide a more predictable outcome. Could this result in a less or more rigorous standard than that required of members covered by CRA?

D. Fair Lending Issues

One of the requirements for members completing a Community Support Statement is to provide information on any final administrative or judicial ruling against the member of a fair lending or fair housing nature within the previous two years. In the preamble to the Community Support regulation, the Finance Board indicated that this information was being required because it would bear directly upon the member's Community Support performance and may have occurred since the CRA examination was conducted (and thus would not be reflected in the CRA evaluation).

If no final rulings have been issued, the member need provide no further information. However, members covered by CRA are reviewed for any practices of a discriminatory nature in the course of their CRA evaluation, and the Finance Board includes this assessment in its review for Community Support purposes.

21. Since insurance company and credit union members are not reviewed for fair lending performance in the course of a CRA examination, should the Finance Board require these non-CRA covered members to report their fair lending, including fair housing, efforts as part of their Community Support review (in addition to reporting information on final judgments)?

22. FIRREA amended the Home Mortgage Disclosure Act of 1975 (HMDA) 12 U.S.C. 2803, to require financial institutions to report the race, sex, and income of credit applicants. The Finance Board incorporates analysis of CRA-covered members' HMDA data into its Community Support review by virtue of the federal financial regulator's inclusion of HMDA data analysis in the CRA evaluation. Credit unions are subject to the reporting requirements of HMDA, but are not subject to CRA. For consistency, should the Finance Board require credit union members to report their HMDA information to the Finance Board as part of the Community Support requirements?

23. Congress is considering legislation to address discriminatory (redlining) practices by insurance companies in making their insurance products available. As part of the Community Support review, should the Finance Board require information from insurance company members regarding their respective efforts to sell their home insurance products without regard to race, color, religion, national origin, sex, and all the other prohibited bases included in the federal fair lending laws?

E. Public Comment Process

Participation by the public in the Community Support review process has assisted the Finance Board in assessing community needs and the effectiveness of member efforts. The Community Support regulation (§ 936.8) requires each of the FHLBanks to maintain a mailing list for Community Support review notice purposes. These lists include all Advisory Council members, public interest and community organizations in their respective districts, and any other organizations or individuals that have requested to be advised when members have been selected for review.

24. How can the Finance Board ensure that public comments will be provided with regard to insurance company and credit union members selected for Community Support review?

F. Timing of the Community Support Review

The Community Support regulation (§ 936.4) requires that members be reviewed for their Community Support performance approximately every two years. As described in the preamble to the regulation, the Finance Board selects one-eighth of the FHLBank System membership in each district for review each calendar quarter of the two-year review cycle. Members are selected to the extent possible based on chronological sequence of their most recent CRA evaluation, with new members not reviewed until after one year of membership.

Insurance company and credit union members, not being subject to the community investment requirements of CRA, cannot be presumed to have a record to review for Community Support purposes at the time of their initial Community Support reviews.

25. Should the Finance Board consider requiring insurance company and credit union members to submit a Community Support Action Plan in lieu of being reviewed for their Community Support performance to date? The Action Plan could then serve as a baseline for subsequent reviews, and would provide a safe harbor in the event of this being the member's first involvement in community investment activities.

26. Should the Finance Board consider making Community Support a threshold requirement for new insurance company and credit union members?

27. Should insurance companies and credit unions that are already members of the FHLBank System be treated differently from prospective insurance company and credit union members?

G. Residential Lending Commitment

In the regulation (§ 936.7(c)), the Finance Board indicated that it may restrict a member's access to long-term advances if its Community Support Statement "does not adequately establish a reasonable commitment to residential lending and Community Support", and the member fails to address deficiencies by implementing an Action Plan. Similarly, the statute and the regulation require the Finance Board to take into account a member's record of lending to first-time homebuyers as a condition for access to long-term advances.

28. In the case of insurance company and credit union members, should the purchase of loans and securities alone be deemed satisfactory evidence of a commitment to residential lending and Community Support? How should these loans and securities be evaluated by the Finance Board to assure that they meet Community Support standards?

29. How should the Finance Board evaluate an insurance company or credit union member's record of lending to first-time homebuyers? Should the purchase of loans and securities satisfy this requirement? How should the Finance Board evaluate whether a security interest in a loan satisfactorily meets this standard?

30. Should the Finance Board require some measure of loan origination by insurance company and credit union members as a part of the Community Support standard?

H. Regulatory Burden

In promulgating the Community Support regulation, the Finance Board stated that it intended to strike a balance between the policy goals of FIRREA and enhancing the FHLBank System's role as a community lending partner, and at the same time not impairing the System's attractiveness to new members. The Finance Board hoped to achieve such a balance in part by relying on existing CRA documentation to minimize paperwork for members and to avoid any costly new level of examination.

31. How can the Finance Board structure the Community Support requirements to encourage and ensure Community Support activities by members not covered by CRA and still keep any paperwork burden minimized?

After analyzing the comments and suggestions received in response to this advance notice, the Finance Board will publish a proposed rule for comment prior to a regulation. The Finance Board will welcome comments from all interested persons at each stage of the rulemaking process.

Dated: August 25, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–21366 Filed 9–1–93; 8:45 am]

BILLING CODE 6720–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Fixed Size Standard Levels

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is re-proposing a rule designed to streamline its size

standards by reducing the number of fixed size standard levels to nine. This will be achieved by retaining the five existing employee-based levels and establishing four new receipts-based levels. The four new receipts-based levels reflect an inflationary adjustment applied to SBA's current and most common receipts-based size standards. SBA believes that the current system of thirty size standard levels has led to confusion and has created a needless complication of the size standards. SBA believes that adopting a limited number of fixed size standard levels, each representing significantly different firm sizes, would make it easier for a business to know which size standard applies to it. Furthermore, as a part of this proposed change, an adjustment for inflation has been applied to the streamlined receipts-based size standards which will, in effect, restore eligibility to firms that have lost their status over time solely because of inflation. This proposal to streamline the size standards is essentially the same as was proposed on December 31, 1992.

DATE: Comments must be submitted on or before November 1, 1993.

ADDRESSES: Send comments to: Gary M. Jackson, Director, Size Standards Staff, 409 3rd Street, SW—suite 8150, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ajoy K. Sinha, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On December 31, 1992, the SBA published a proposed rule (57 FR 62515) proposing to streamline its size standards by reducing the number of fixed size standards levels to nine. Furthermore, as a part of SBA's simplification of the numerical size standards, adjustments had been made to the receipts-based size standard levels proposed at that time to account for the effects of inflation since March 12, 1984, the time of the last general inflationary adjustment to receipts-based size standards (49 FR 5024). However, the incoming Administration directed that all recently published but not finalized rules were to be thoroughly reviewed, and all Government Agencies were to determine their implications. (Office of Management and Budget Memorandum on Regulatory Review, dated January 22, 1993, to Heads and Acting Heads of Federal Agencies.) The SBA withdrew the proposed rule on February 19, 1993 (58 FR 9131) so it could further evaluate the implications of such a standard.

The newly appointed SBA Administration has completed its review of the previously published rule, and believes the SBA's simplification of size standards has continued merit and deserves consideration by SBA and the public. Hence, SBA is re-proposing to streamline its size standards by reducing the number of fixed size standard levels to nine. This will be achieved by retaining the five existing employee-based levels and establishing four new receipts-based levels. SBA believes that the current system of thirty size standard levels has led to confusion and has created a needless complication of the size standards. SBA believes that adopting a limited number of fixed size standard levels, each representing significantly different firm sizes, would make it easier for a business to know which size standard applies to it. The nine fixed size standard levels are as follows:

Nine Fixed Size Standard Levels

Proposed New Standards

$5.0 million in annual receipts
$10.0 million in annual receipts
$18.0 million in annual receipts
$25.0 million in annual receipts

Existing Standards To Be Retained

100 employees
500 employees
750 employees
1000 employees
1500 employees

As part of SBA's simplification of the numerical size standards, adjustments have been made to the receipts-based size standard levels proposed at this time to account for the effects of inflation since March 12, 1984, the time of the last general inflationary adjustment to receipts-based size standards (see 49 FR 5024).

In determining the rate of inflation, SBA has utilized the Gross Domestic Product (GDP) Implicit Price Deflator calculated and published by the U.S. Department of Commerce, which is the broadest single measure of inflation. It measures price changes in the total national output of goods and services in terms of the expenditures by which those goods and services were acquired. These expenditures cover personal consumption, business investment, and government purchases.

The methodology utilized in determining the appropriate inflation adjustment is essentially the same as was used for inflation adjustments in 1975 and 1984, and is as follows:

1. Determine the base period used to establish the current size standard, and
2. Determine the GDP deflator from the end of that base period to the most recent point in time for which the GDP deflator has been published.

This inflation adjustment is based on the last index value used for the 1984 inflation adjustment and the latest available index value. The 1984 adjustment accounted for inflation up to the 3rd quarter of 1982, the latest available index at the time of the proposed adjustment. For purposes of this rule, the 3rd quarter of 1982 is therefore the base period for which SBA calculated the amount of inflation that has occurred since the last adjustment. The U.S. Department of Commerce's latest data show index values of 84.3 for the 3rd quarter of 1982 and 122.9 for the 1st quarter of 1993. This change records inflation of 45.8 percent for the time between these two periods.

The inflation adjustment percentage is then applied to SBA's most common receipts-based size standards—$3.5 million, $7.0 million, $12.5 million and $17.0 million. After application of the adjustment percentage and rounding off, these four receipts-based size standards would become the four receipts-based size standard levels of $5.0 million, $10.0 million, $18.0 million and $25.0 million. [Note: The December 31, 1992 proposed rule listed one fixed level at $24.0 million. Because of the availability of more current data on inflation, this proposed rule adjusts that level to $25.0 million. The three other fixed receipts-based standards do not change despite the more current data.]

In order to achieve the twin goals of adjusting for inflation and streamlining the SBA size standards, the inflation adjustment would then be calculated for each of the existing receipts-based size standards, except where legally prohibited from doing so as described below. This preliminary standard would then be adjusted to the closest size standard among the four receipts-based size standards. As a result, forty-seven size standards would receive an inflation adjustment that is either larger or smaller than the 45.8 percent inflator. Furthermore, in most of these cases, there would be a moderate difference between the proposed receipt-based size standard level and a fully adjusted size standard. Also, in no industry would a firm currently defined as small business lose its status as an eligible small business for SBA programs as a result of this proposal.

The industries receiving other than a full 45.8 percent inflation adjustment, listed by Standard Industrial Classification (SIC) code (see attached table for industry title), are as follows:

More Than Full Adjustment—SIC codes 0211, 0912, 0913, 0919, 0921, 0971, 4724, 4961, 5271, 5331, 5521,

5812 (part), 5983, 6515 (part), 6531, 7216, 7217, 7381, 7382.

Less Than Full Adjustment—SIC codes 4841, 4899, 5311, 5411, 5511, 5541, 5611, 5621, 5651, 5661, 5722, 5731, 5734, 7349, 7812, 7819, 7822, 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, 7379, 8744 (part), 8721.

Also, in keeping in line with SBA's twin objectives of adjusting for inflation and streamlining its size standards, four footnotes (8, 12, 15, and 16) are being adjusted similar to the industry size standards. Size standards for Offshore Marine Services (part of SIC Major Groups 44 and 45), Retail Sale of Aircraft (part of SIC code 5599), Leasing of Building Space to the Federal Government by Owners (part of SIC Major Group 65) and industries without a specific size standard listed in SIC Division I—Services, are being established at $18.0 million, $10.0 million, $18.0 million and $5.0 million, respectively.

Finally, it must be noted that the size standards for certain industries have been either established by statute or prohibited by statute from change until after September 30, 1996. The size standards for these industries will remain at their current levels. Title VII of Public Law 100–656 established the "Small Business Competitiveness Demonstration Program" to test the competitiveness of small business on Federal procurements. That program prohibits a change in size standards before September 30, 1996 for the Construction industries (SIC codes 1521–1799); the Engineering, Architecture, Surveying and Mapmaking industries (SIC codes 8711, 8712, 8713, and part of SIC code 7389); and the Refuse Systems and Related Services industries (SIC code 4953 and part of SIC code 4212). Also, Public Law 99–272 established the size standard for both Agricultural Production—Crops, (SIC codes 0111–0191); and Livestock and Animal Specialties, (SIC codes 0212–0291, except SIC codes 0211 and 0252) at $500,000.

SBA specifically invites comment on the appropriateness of these fixed size standards levels or on alternative size standards (either higher or lower). SBA is willing to consider industry data and other information prior to making a final decision on a size standard. Comments on the proposed standards or suggestions on other standards should address the questions of:

- The interaction of these size standards with SBA's programs;
- The relative levels of participation at different size standards;
- The effect of these proposed size standards or other alternative size standards on business firms within these industries;
- The prospect of significant new entrants into these industries in response to this program; and
- The impact of higher size standards on smaller-sized businesses.

Compliance with Regulatory Flexibility Act, Executive Orders 12291, 12612, and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). In addition, this proposed rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a summary regulatory impact analysis and an initial regulatory flexibility analysis of this proposed rule.

(1) Description of Entities to Which the Rule Applies

SBA estimates that an additional 22,000 firms will be considered small if this rule were to become final. These firms would become eligible to seek assistance offered by SBA's programs, provided they meet other program requirements. Many of these concerns probably had small business status in 1984, when the last comprehensive revision of size standards was issued by SBA, but since have lost eligibility because of general price increases. The current changes, in fact, operate roughly as adjustments for price changes (inflation) since that date but also streamline the size standards table. Over 11,000 of the firms gaining eligibility operate in retail trade while approximately 9,000 operate in the services industries (Divisions G and I, respectively, of the SIC system of classifying industries). Other firms affected by this rule include service firms within the agricultural or mining sectors, or firms in those transportation industries with receipt-based size standards. Firms which would become eligible for SBA assistance if this rule were to become final cumulatively generate $95 billion in annual sales. This figure is less than 5 percent of the total sales in those industries with higher size standards. The new size standards would not impose a regulatory burden because they do not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Under this proposed rule for SBA's procurement programs, there are no easily quantifiable benefits. However, the additional competition may result in a lower price to the Government for its procurements which have been set aside, but SBA is not able to quantify this benefit. Also, the higher size standards may allow for a limited number of additional procurements now competed on an unrestricted basis to be reserved for small business set-aside or 8(a) contracting. In the 7(a) Loan Program, it is estimated that 250 loans amounting to $100 millions would be made to the newly defined small firms.

(3) Description of Potential Costs of the Rule

The changes in size standards as they impact on Government procurement should not add any element of cost to the Government and, in fact, as described above may reduce the cost to the procuring Federal agency. Similarly, the rule should not result in any extra costs with respect to the 7(a) Loan Program. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers, and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors, although smaller-sized businesses or 8(a) firms may be unsuccessful in competing for some Federal procurement opportunities because of the presence of the larger, newly defined small businesses; some of which will be more competitive in winning Federal procurements.

(4) Description of the Potential Net Benefits from the Rule

From the above discussion, SBA believes that, because the potential costs of this proposed rule are minimal, the potential net benefits would approach fairly closely the potential benefits. The impact of the new size standard will appear predominantly in the Federal procurement area.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

SBA has provided above a statement of the reasons why the new size standards are proposed and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for Proposed Rule

The legal basis for the proposal is sections 3(a) and 5(b) of the Small

Businesses Act, 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

This proposed rule will establish the most appropriate individual size standard by which to define those small businesses that are eligible for SBA's assistance programs. There are no significant alternatives to defining a small business.

SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this proposed rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

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

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

2. Section 121.601 is amended by revising the heading to the table of "Size Standards by SIC Industry" and Division A, B, E, G, H, and I to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Division A—Agriculture	
	Major Group 01—Agricultural Production—Crops	
0111	Wheat	$0.5
0112	Rice	$0.5
0115	Corn	$0.5
0116	Soybeans	$0.5
0119	Cash Grains, N.E.C.	$0.5
0131	Cotton	$0.5
0132	Tobacco	$0.5
0133	Sugarcane and Sugar Beets	$0.5
0134	Irish Potatoes	$0.5
0139	Field Crops, Except Cash Grains, N.E.C.	$0.5
0161	Vegetables and Melons	$0.5
0171	Berry Crops	$0.5
0172	Grapes	$0.5
0173	Tree Nuts	$0.5
0174	Citrus Fruits	$0.5
0175	Deciduous Tree Fruits	$0.5
0179	Fruits and Tree Nuts, N.E.C.	$0.5
0181	Ornamental Floriculture Nursery Products	$0.5
0182	Food Crops Grown Under Cover	$0.5
0191	General Farms, Primarily Crop	$0.5
	Major Group 02—Livestock and Animal Specialties	
0211	Beef Cattle Feedlots (Custom)	$5.0
0212	Beef Cattle, Except Feedlots	$0.5
0213	Hogs	$0.5
0214	Sheep and Goats	$0.5
0219	General Livestock, Except Dairy and Poultry	$0.5
0241	Dairy Farms	$0.5
0251	Broiler, Fryer, and Roaster Chickens	$0.5
0252	Chicken Eggs	$10.0
0253	Turkeys and Turkey Eggs	$0.5
0254	Poultry Hatcheries	$0.5
0259	Poultry and Eggs, N.E.C.	$0.5
0271	Fur-Bearing Animals and Rabbits	$0.5
0272	Horses and Other Equines	$0.5
0273	Animal Aquaculture	$0.5
0279	Animal Specialties, N.E.C.	$0.5
0291	General Farms, Primarily Livestock and Animal Specialities	$0.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 07—Agricultural Services	
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	$5.0
0722	Crop Harvesting, Primarily by Machine	$5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	$5.0
0724	Cotton Ginning	$5.0
0741	Veterinary Services for Livestock	$5.0
0742	Veterinary Services for Animal Specialties	$5.0
0751	Livestock Services, Except Veterinary	$5.0
0752	Animal Specialty Services, Except Veterinary	$5.0
0761	Farm Labor Contractors and Crew Leaders	$5.0
0762	Farm Management Services	$5.0
0781	Landscape Counseling and Planning	$5.0
0782	Lawn and Garden Services	$5.0
0783	Ornamental Shrub and Tree Services	$5.0
	Major Group 08—Forestry	
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	$5.0
0851	Forestry Services	$5.0
	Major Group 09—Fishing, Hunting, and Trapping	
0912	Finfish	$5.0
0913	Shellfish	$5.0
0919	Miscellaneous Marine Products	$5.0
0921	Fish Hatcheries and Preserves	$5.0
0971	Hunting and Trapping, and Game Propagation	$5.0
	Division B—Mining	
	Major Group 10—Metal Mining	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C.	500
	Major Group 12—Coal Mining	
1221*	Bituminous Coal and Lignite Surface Mining	500
1222*	Bituminous Coal Underground Mining	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	$5.0
	Major Group 13—Oil and Gas Extraction	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C.	$5.0
	Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500
	Division E—Transportation, Communications, Electric, Gas, and Sanitary Services	
	Major Group 40—Railroad Transportation	
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
	Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation	
4111	Local and Suburban Transit	$5.0
4119	Local Passenger Transportation, N.E.C.	$5.0
4121	Taxicabs	$5.0
4131	Intercity and Rural Bus Transportation	$5.0
4141	Local Bus Charter Service	$5.0
4142	Bus Charter Service, Except Local	$5.0
4151	School Buses	$5.0
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	$5.0
	Major Group 42—Motor Freight Transportation and Warehousing	
4212	Local Trucking Without Storage	$18.0
4213	Trucking, Except Local	$18.0
4214	Local Trucking With Storage	$18.0
4215*	Courier Services, Except by Air	$18.0
4221	Farm Product Warehousing and Storage	$18.0
4222	Refrigerated Warehousing and Storage	$18.0
4225	General Warehousing and Storage	$18.0
4226	Special Warehousing and Storage, N.E.C.	$18.0
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
	Major Group 44—Water Transportation	
4412	Deep Sea Foreign Transportation of Freight	500
4424*	Deep Sea Domestic Transportation of Freight	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449*	Water Transportation of Freight, N.E.C.	500
4481*	Deep Sea Transportation of Passengers, Except by Ferry	500
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C.	500
4491*	Marine Cargo Handling	$18.0
4492*	Towing and Tugboat Services	$5.0
4493*	Marinas	$5.0
4499*	Water Transportation Services, N.E.C.	$5.0
	Major Group 45—Transportation by Air	
4512*	Air Transportation, Scheduled	1,500
4513*	Air Courier Services	1,500
4522	Air Transportation, Nonscheduled	1,500
4581*	Airports, Flying Fields, and Airport Terminal Services	$5.0
	Major Group 46—Pipelines, Except Natural Gas	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	$25.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 47—Transportation Services	
4724*	Travel Agencies	$5.0
4725*	Tour Operators	$5.0
4729	Arrangement of Passenger Transportation, N.E.C.	$5.0
4731*	Arrangement of Transportation of Freight and Cargo	$18.0
4741*	Rental of Railroad Cars	$5.0
4783	Packing and Crating	$18.0
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	$5.0
4789	Transportation Services, N.E.C.	$5.0
	Major Group 48—Communications	
4812*	Radiotelephone Communications	1,500
4813*	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.0
4841*	Cable and Other Pay Television Services	$10.0
4899	Communications Services, N.E.C.	$10.0
	Major Group 49—Electric, Gas, and Sanitary Services	
4911	Electric Services	(1 4,000,000)
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$5.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C.	$5.0
4941	Water Supply	$5.0
4952	Sewerage Systems	$5.0
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$5.0
4961	Steam and Air-Conditioning Supply	$10.0
4971	Irrigation Systems	$5.0
	Division G—Retail Trade[2]	
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	$5.0
5251	Hardware Stores	$5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	$5.0
5271	Mobile Home Dealers	$10.0
	Major Group 53—General Merchandise Stores	
5311	Department Stores	$18.0
5331	Variety Stores	$10.0
5399	Miscellaneous General Merchandise Stores	$5.0
	Major Group 54—Food Stores	
5411	Grocery Stores	$18.0
5421*	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	$5.0
5431	Fruit and Vegetable Markets	$5.0
5441	Candy, Nut, and Confectionery Stores	$5.0
5451	Dairy Products Stores	$5.0
5461*	Retail Bakeries	$5.0
5499	Miscellaneous Food Stores	$5.0
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used)	$18.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
5521	Motor Vehicle Dealers (Used Only)	$18.0
5531	Auto and Home Supply Stores	$5.0
5541	Gasoline Service Stations	$5.0
5551	Boat Dealers	$5.0
5561	Recreational Vehicle Dealers	$5.0
5571	Motorcycle Dealers	$5.0
5599	Automotive Dealers, N.E.C.	$5.0
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Accessory Stores	$5.0
5621	Women's Clothing Stores	$5.0
5632*	Women's Accessory and Specialty Stores	$5.0
5641	Children's and Infants' Wear Stores	$5.0
5651	Family Clothing Stores	$5.0
5661	Shoe Stores	$5.0
5699	Miscellaneous Apparel and Accessory Stores	$5.0
	Major Group 57—Home Furniture, Furnishings, and Equipment Stores	
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	$5.0
5714	Drapery, Curtain, and Upholstery Stores	$5.0
5719	Miscellaneous Homefurnishings Stores	$5.0
5722	Household Appliance Stores	$5.0
5731*	Radio, Television, and Consumer Electronics Stores	$5.0
5734*	Computer and Computer Software Stores	$5.0
5735*	Record and Prerecorded Tape Stores	$5.0
5736*	Musical Instrument Stores	$5.0
	Major Group 58—Eating and Drinking Places	
5812	Eating Places, Except Food Service, Institutional	$5.0
5812	Food Service, Institutional	$18.0
5813	Drinking Places (Alcoholic Beverages)	$5.0
	Major Group 59—Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores	$5.0
5921	Liquor Stores	$5.0
5932*	Used Merchandise Stores	$5.0
5941	Sporting Goods Stores and Bicycle Shops	$5.0
5942	Book Stores	$5.0
5943	Stationery Stores	$5.0
5944	Jewelry Stores	$5.0
5945	Hobby, Toy, and Game Shops	$5.0
5946	Camera and Photographic Supply Stores	$5.0
5947	Gift, Novelty, and Souvenir Shops	$5.0
5948	Luggage and Leather Goods Stores	$5.0
5949	Sewing, Needlework, and Piece Goods Stores	$5.0
5961	Catalog and Mail-Order Houses	$18.0
5962	Automatic Merchandising Machine Operators	$5.0
5963	Direct Selling Establishments	$5.0
5983	Fuel Oil Dealers	$10.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	$5.0
5989*	Fuel Dealers, N.E.C.	$5.0
5992	Florists	$5.0
5993	Tobacco Stores and Stands	$5.0
5994	News Dealers and Newsstands	$5.0
5995*	Optical Goods Stores	$5.0
5999	Miscellaneous Retail Stores, N.E.C.	$5.0
	Division H—Finance, Insurance, and Real Estate	
	Major Group 60—Depository Institutions	
6021*	National Commercial Banks	$100,000,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
6022	State Commercial Banks	$100,000,000
6029*	Commercial Banks, N.E.C.	$100,000,000
6035*	Savings Institutions, Federally Chartered	$100,000,000
6036*	Savings Institutions, Not Federally Chartered	$100,000,000
6061	Credit Unions, Federally Chartered	$100,000,000
6062	Credit Unions, Not Federally Chartered	$100,000,000
6081	Branches and Agencies of Foreign Banks	$100,000,000
6082	Foreign Trade and International Banks	$100,000,000
6091	Nondeposit Trust Facilities	$5.0
6099	Functions Related to Depositor Banking, N.E.C.	$5.0
	Major Group 61—Nondepository Institution	
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	$5.0
6159	Miscellaneous Business Credit Institutions	$5.0
6162	Mortgage Bankers and Loan Correspondents	$5.0
6163	Loan Brokers	$5.0
	Major Group 62—Security and Commodity Brokers, Dealers, Exchanges and Services	
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	$5.0
6231	Security and Commodity Exchanges	$5.0
6282	Investment Advice	$5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	$5.0
	Major Group 63—Insurance Carriers	
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C.	$5.0
	Major Group 64—Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service	$5.0
	Major Group 65—Real Estate	
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	$5.0
6514	Operators of Dwellings Other Than Apartment Buildings	$5.0
6515	Operators of Residential Mobile Home Sites	$5.0
	Leasing of Building Space to Federal Government by Owners	$18.0
6517	Lessors of Railroad Property	$5.0
6519	Lessors of Real Property, N.E.C.	$5.0
6531	Real Estate Agents and Managers	$5.0
6541	Title Abstract Offices	$5.0
6552	Land Subdividers and Developers, Except Cemeteries	$5.0
6353	Cemetery Subdividers and Developers	$5.0
	Major Group 67—Holding and Other Investment Offices	
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C.	$5.0
6722	Management Investment Offices, Open-End	$5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.	$5.0
6732	Educational, Religious, and Charitable Trusts	$5.0
6733	Trusts, Except Educational, Religious, and Charitable	$5.0
6792	Oil Royalty Traders	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
6794	Patent Owners and Lessors	$5.0
6798	Real Estate Investment Trusts	$5.0
6799	Investors, N.E.C.	$5.0
	Division I—Services	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	$5.0
7032	Sporting and Recreational Camps	$5.0
7033	Recreational Vehicle Parks and Campsites	$5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	$5.0
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial	$10.0
7212	Garment Pressing, and Agents for Laundries and Drycleaners	$5.0
7213	Linen Supply	10.0
7215	Coin-Operated Laundries and Drycleaning	$5.0
7216	Drycleaning Plants, Except Rug Cleaning	$5.0
7217	Carpet and Upholstery Cleaning	$5.0
7218	Industrial Launderers	$10.0
7219	Laundry and Garmet Services, N.E.C.	$5.0
7221	Photographic Studios, Portrait	$5.0
7231	Beauty Shops	$5.0
7241	Barber Shops	$5.0
7251	Shoe Repair Shops and Shoeshine Parlors	$5.0
7261	Funeral Service and Crematories	$5.0
7291*	Tax Return Preparation Services	$5.0
7299	Miscellaneous Personal Services, N.E.C.	$5.0
	Major Group 73—Business Services	
7311	Advertising Agencies	$5,0
7312	Outdoor Advertising Services	$5.0
7313	Radio, Television, and Publishers' Advertising Representatives	$5.0
7319	Advertising, N.E.C.	$5.0
7322*	Adjustment and Collection Services	$5.0
7323*	Credit Reporting Services	$5.0
7331	Direct Mail Advertising Services	$5.0
7334*	Photocopying and Duplicating Services	$5.0
7335*	Commercial Photography	$5.0
7336*	Commercial Art and Graphic Design	$5.0
7338*	Secretarial and Court Reporting Services	$5.0
7342	Disinfecting and Pest Control Services	$5.0
7349	Building Cleaning and Maintenance Services, N.E.C.	$10.0
7352*	Medical Equipment Rental and Leasing	$5.0
7353*	Heavy Construction Equipment Rental and Leasing	$5.0
7359*	Equipment Rental and Leasing, N.E.C.	$5.0
7361	Employment Agencies	$5.0
7363*	Help Supply Services	$5.0
7371*	Computer Programming Services	$18.0
7372	Prepackaged Software	$18.0
7373*	Computer Intergrated Systems Design	$18.0
7374	Computer Processing and Data Preparation and Processing Services	$18.0
7375*	Information Retrieval Services	$18.0
7376*	Computer Facilities Management Services	$18.0
7377*	Computer Rental and Leasing	$18.0
7378*	Computer Maintenance and Repair	$18.0
7379	Computer Related Services, N.E.C.	$18.0
7381*	Detective, Guard, and Armored Car Services	$10.0
7382*	Security Systems Services	$10.0
7383*	News Syndicates	$5.0
7384*	Photofinishing Laboratories	$5.0
7389*	Business Services, N.E.C.	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 75—Automotive Repair, Services, and Parking	
7513	Truck Rental and Leasing, Without Drivers	$18.0
7514*	Passenger Car Rental	$18.0
7515*	Passenger Car Leasing	$18.0
7519	Utility Trailer and Recreational Vehicle Rental	$5.0
7521*	Automobile Parking	$5.0
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops	$5.0
7533*	Automotive Exhaust System Repair Shops	$5.0
7534	Tire Retreading and Repair Shops	$10.0
7536*	Automotive Glass Replacement Shops	$5.0
7537*	Automotive Transmission Repair Shops	$5.0
7538	General Automotive Repair Shops	$5.0
7539	Automotive Repair Shops, N.E.C.	$5.0
7542	Carwashes	$5.0
7549	Automotive Services, Except Repair and Carwashes	$5.0
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops	$5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	$5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	$5.0
7631	Watch, Clock, and Jewelry Repair	$5.0
7641	Reupholstery and Furniture Repair	$5.0
7692	Welding Repair	$5.0
7694	Armature Rewinding Shops	$5.0
7699	Repair Shops and Related Services, N.E.C.	$5.0
	Major Group 78—Motion Pictures	
7812*	Motion Picture and Video Tape Production	$18.0
7819	Services Allied to Motion Picture Production	$18.0
7822*	Motion Picture and Video Tape Distribution	$18.0
7829	Services Allied to Motion Picture Distribution	$5.0
7832	Motion Picture Theaters, Except Drive-In	$5.0
7833	Drive-In Motion Picture Theaters	$5.0
7841*	Video Tape Rental	$5.0
	Major Group 79—Amusement and Recreation Services	
7911	Dance Studios, Schools, and Halls	$5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	$5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	$5.0
7933	Bowling Centers	$5.0
7941	Professional Sports Clubs and Promoters	$5.0
7991*	Physical Fitness Facilities	$5.0
7993	Coin-Operated Amusement Devices	$5.0
7996	Amusement Parks	$5.0
7997	Membership Sports and Recreation Clubs	$5.0
7999	Amusement and Recreation Services, N.E.C.	$5.0
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	$5.0
8041	Offices and Clinics of Chiropractors	$5.0
8042	Offices and Clinics of Optometrists	$5.0
8043*	Offices and Clinics of Podiatrists	$5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	$5.0
8051	Skilled Nursing Care Facilities	$5.0
8052*	Intermediate Care Facilities	$5.0
8059	Nursing and Personal Care Facilities N.E.C.	$5.0
8062	General Medical and Surgical Hospitals	$5.0
8063	Psychiatric Hospitals	$5.0
8069	Specialty Hospitals, Except Psychiatric	$5.0
8071	Medical Laboratories	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
8072	Dental Laboratories	$5.0
8082*	Home Health Care Services	$5.0
8092*	Kidney Dialysis Centers	$5.0
8093*	Specialty Outpatient Facilities, N.E.C.	$5.0
8099*	Health and Allied Services, N.E.C.	$5.0
	Major Group 81—Legal Services	
8111	Legal Services	$5.0
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	$5.0
8222	Junior Colleges and Technical Institutes	$5.0
8231	Libraries	$5.0
8243	Data Processing Schools	$5.0
8244	Business and Secretarial Schools	$5.0
8249	Vocational Schools, N.E.C.	$5.0
8299	Schools and Educational Services, N.E.C.	$5.0
8299	Flight Training Services	$18.0
	Major Group 83—Social Services	
8322*	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	$5.0
8351	Child Day Care Services	$5.0
8361	Residential Care	$5.0
8399	Social Services, N.E.C.	$5.0
	Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens	
8412*	Museums and Art Galleries	$5.0
8422*	Arboreta and Botanical or Zoological Gardens	$5.0
	Major Group 86—Membership Organizations	
8611	Business Associations	$5.0
8621	Professional Membership Organizations	$5.0
8631	Labor Unions and Similar Labor Organizations	$5.0
8641	Civic, Social, and Fraternal Associations	$5.0
8651	Political Organizations	$5.0
8661	Religious Organizations	$5.0
8699	Membership Organizations, N.E.C.	$5.0
	Major Group 87—Engineering, Accounting, Research, Management, and Related Services	
8711*	Engineering Services:	
	Military and Aerospace Equipment and Military Weapons and Contracts and Subcontracts for Engineering Services awarded under the National Energy Policy Act of 1992.	$13.5
	Marine Engineering and Naval Architecture	$9.0
	Other Engineering Services	$2.5
8712*	Architectural Services (Other Than Naval)	$2.5
8713*	Surveying Services	$2.5
8721*	Accounting, Auditing, and Bookkeeping Services	$5.0
8731*	Commercial Physical and Biological Research:	
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
	Other Commercial Physical and Biological Research	500
8732*	Commercial Economic, Sociological, and Educational Research	$5.0
8733*	Noncommercial Research Organizations	$5.0
8734*	Testing Laboratories	$5.0
8741*	Management Services	$5.0
8742*	Management Consulting Services	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
8743*	Public Relations Services	$5.0
8744*	Facilities Support Management Services	$5.0
	Base Maintenance	$18.0
8748*	Business Consulting Services, N.E.C.	$5.0
	Major Group 89—Services, Not Elsewhere Classified	
8999	Services, N.E.C.	$5.0

[1] Megawatt hrs.
[2] Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.

3. Section 121.601, Standard Industrial Classification Table, footnote 8 is revised to read as follows:

[8] Offshore Marine Services: The applicable size standard shall be $18.0 million for firms furnishing specific transportation services to a concern engaged in offshore oil and/or natural gas exploration, drilling production, marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site.

4. Section 121.601, Standard Industrial Classification Table, footnote 12 is revised to read as follows:

[12] SIC code 5599: For retail firms whose principal line of business is the retail sale of aircraft, a $10.0 million size standard shall apply.

5. Section 121.601, Standard Industrial Classification Table, footnote 15 is amended by revising the first sentence to read as follows:

[15] Major Group 65—Leasing of building space to the Federal Government by Owners: For purposes of Government procurement, a size standard of $18.0 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standards for those procurements shall apply to the concern which owns the property and not to those acting as an agent for the owning concern. There is no size standard concerning the agent in a leasing arrangement. * * *

6. Section 121.601, Standard Industrial Classification Table, footnote 16 is revised to read as follows:

[16] Division I—Services: For all industries not specifically listed in this division, the size standard is $5.0 million.

Dated: July 15, 1993.

Erskine B. Bowles,

Administrator, U.S. Small Business Administration.

[FR Doc. 93–21365 Filed 9–1–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–14]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received November 1, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No.———, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on August 26, 1993.

Danvers Long,

Acting Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27375.

Petitioner: Professional Pilots Federation.

Regulations Affected: 14 CFR 121.383(c).

Description of Rulechange Sought: To modify § 121.383 by repealing subsection (c), thereby negating the present requirement that part 121 air carriers refrain from utilizing pilots who have reached the age of 60 and permitting pilots to operate in that capacity after reaching the age of 60.

Petitioner's Reason for the Request: The petitioner feels that Federal law and policy; operational and regulatory developments since promulgation of the rule in 1960; together with the results of the recent FAA Civil Aeromedical Institute study that found no correlation between increased pilot age and increased accident rates; compel repeal of the rule.

Disposition of Petitions

Docket No.: 25850.

Petitioner: The Aviation Consumer Action Project and Victims of Pan AM Flight 103.

Sections of the FAR Affected: 14 CFR part 108.

Description of Rulechange Sought: To require U.S. air carriers to notify passengers of credible threats to flights and to establish a hotline to supply information about all threats.

Denial, August 10, 1993.

[FR Doc. 93–21394 Filed 9–1–1993–8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AAL–2]

Proposed Modification of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to modify the Class E airspace at Kitzebue, AK. The proposed action would correct the legal description which inadvertently eliminated the Class E extensions during the Terminal Airspace Reconfiguration Amendment No. 71–16. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "control zone," and airspace designated from the surface for an airport where there is no operating control tower will be Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operators executing established standard instrument approach procedures (SIAP).

DATES: Comments must be received on or before October 14, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Air Traffic Division, AAL–500, Docket No. 93–AAL–02, 222 West 7th Avenue #14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region, Third Floor, Module B, Federal Building U.S. Courthouse, 222 West 7th Avenue, Anchorage, AK.

An informal docket may also be examined during normal business hours in the Office of the Manager, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, Module G, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AAL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at Module G, Federal Building U.S. Courthouse, 222 West 7th Avenue, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AAL–531, Air Traffic Division, 222 West 7th Avenue #14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Kotzebue, AK. This amendment would correct the legal description which inadvertently eliminated the control zone extensions during the Terminal Airspace Reconfiguration Amendment No. 71–16. These changes are needed to provide controlled airspace to the surface to contain IFR operations at the airport. Airspace reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "control zone," and airspace designated from the surface, including any arrival extensions, for an airport where there is no operating control tower will be Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR and NDB SIAP's at the Kotzebue Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AAL AK E2 Kotzebue, AK [Revised]
Kotzebue, Ralph Wien Memorial Airport, AK (lat. 66°53′04″N, long. 162°35′56″W)
Kotzebue VOR/DME (lat. 66°53′08″N, long. 162°32′24″W)
Hotham NDB (lat. 66°54′05″N, long. 162°33′52″W)

Within a 4.3-mile radius of the Ralph Wien Memorial Airport and within 2.6 miles each side of the 039° bearing from the Hotham NDB extending from the 4.3-mile radius to 8.9 miles northeast of the airport and within 2.4 miles each side of the 091° radial from the Kotzebue VOR/DME extending from the 4.3-mile radius to 11.5 miles east of the airport and within 2.4 miles each side of the 278° radial from the Kotzebue VOR/DME extending from the 4.3-mile radius to 10.2 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Issued in Anchorage, AK, on August 18, 1993.

Henry A. Elias,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 93–21388 Filed 9–1–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 207

[Docket No. 92N–0291]

Drug Listing Compliance Verification Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its drug listing regulations to codify FDA's current practice of periodically sending drug listing information to drug firms (manufacturers, repackers, and private label distributors) with a request that they review, correct, and return it to FDA within 30 days of its receipt. The proposal would help the agency maintain an accurate and complete list of currently marketed drug products.

DATES: Comments by November 1, 1993. FDA proposes that any final rule based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8049.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) requires a list of all drug products in commercial distribution be provided to the agency. Section 510 of the act (21 U.S.C. 360) requires the owner or operator of every drug establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs to register the establishment with FDA and to submit to the agency a list of its drug products. The act also requires that this list be updated every 6 months (21 U.S.C. 360(j)(2)).

The Drug Listing Branch provides FDA with current information on many drugs in commercial distribution in the United States. Many of the agency's major drug regulatory projects, such as product recalls, depend upon complete and accurate drug listing information. Other Government agencies also use the drug listing information. For example, the Health Care Financing Administration uses the data base to identify reimbursable products for the Medicaid program.

A. Product Listing and Establishment Registration Forms

FDA's regulations in 21 CFR part 207 implement 21 U.S.C. 360. Under 21 CFR 207.21, the owner or operator of an establishment must register the establishment within 5 days of entering into the manufacture or processing of a drug product and must list every drug product in commercial distribution. The establishment must use Form FDA–2656 for the initial registration, listing such information as its business name and address, and the type of ownership or operation (see 21 CFR 207.22 and 207.25). FDA then assigns an establishment registration number. In addition, each establishment is required to submit a list of drugs, including bulk drug substances, on Form FDA–2657 and to update this list each June and December (see 21 CFR 207.22, 207.25, and 207.30). (If a registered establishment reports on behalf of a private label distributor, 21 CFR 207.20 requires the use of Form FDA–2658.) Forms FDA–2657 and FDA–2658 are used to provide required information on each marketed drug, including: (1) The product trade name, (2) the package size and type, (3) a copy of the labels and package insert, (4) the quantity of an ingredient, and (5) the initial marketing date.

B. Compliance Verification Reports

FDA maintains a computer data base containing the establishment registration and drug product information submitted by drug establishments on Forms FDA–2656, FDA–2657, and FDA–2658. The computer data base has two major components: (1) A registration component containing the files on the registered establishments, and (2) a drug listing component containing drug product information in separate files for prescription, over-the-counter, and bulk drug products.

An internal Government study tested the accuracy of the prescription drug listing files by contacting many drug firms to determine whether the information contained in the data base corresponded to the products actually marketed by the firm. The study uncovered a substantial number of errors, due to a variety of causes. For example, some firms failed to list products or listed products inaccurately. Also, FDA has experienced some data processing problems, which the agency is working to correct.

FDA has a compliance program designed to increase the accuracy of the agency's computerized drug product files. The initial phase of the program is focusing on the prescription drug product file. As part of the compliance program, the agency periodically sends to each drug firm a hard copy printout of the agency's computer drug product files that lists the establishment's prescription drugs as reported on Form FDA–2657 or Form FDA–2658. This printout is known as the "Compliance

Verification Report." FDA attaches to the Compliance Verification Report a letter that asks each establishment to verify or correct the listed information and return it to the agency within 30 days. The letter explains that the drug listing information entered in the Compliance Verification Report will substitute for the corresponding portion of the next required updating of drug listing requirements and will not need to be resubmitted on Form FDA–2657. The letter contains instructions regarding other corrections that must be made on Form FDA–2657 or Form FDA–2658 rather than on the Compliance Verification Report.

II. Explanation of the Proposed Rule

FDA is proposing to amend 21 CFR part 207 to incorporate the Compliance Verification Report into the drug listing regulations. Current § 207.3 would be amended in paragraph (a)(3), § 207.31 would be redesignated as § 207.32, and new § 207.31 would describe the Compliance Verification Report and require that any establishment that receives a Compliance Verification Report review, correct, and return it to FDA within 30 days of its receipt. Information entered into the Compliance Verification Report that would fulfill an information requirement of any subsequent semi-annual drug listing requirement would not need to be resubmitted on Form FDA–2657. Drug products, in commercial distribution, which are not listed on the Compliance Verification Report, must be submitted by the establishment to FDA on a Form FDA–2657 or Form FDA–2658 in accordance with the regulations.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has carefully considered the economic impact of this proposed rule and has determined that it requires neither a regulatory impact analysis as specified by Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The agency believes that the proposed rule, if finalized, would generate costs that are well below the thresholds that would signify a major rule. Therefore, the proposed rule does not require a regulatory impact analysis.

The proposed rule would revise the current reporting requirements, which will enable FDA to maintain a more accurate data base of drug listing information. Further, the proposed rule would provide a procedure for drug firms to verify, or correct, drug listing information related to their drug products. Much of the information that is entered into the Compliance Verification Report will substitute for current updating information requirements. No new information would be required by the proposed rule.

FDA believes that, if any costs result from the rule, the amount would be comparatively small in relation to the potential benefits. Accordingly, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Paperwork Reduction Act of 1980

All reporting and recordkeeping requirements for the Compliance Verification Report as required by this proposed regulation have been approved by the Office of Management and Budget (OMB) under control number 0910–0045 "Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution."

The Compliance Verification Report does not solicit any new or additional information from drug establishments than is already required and approved under OMB No. 0910–0045. As explained elsewhere in this preamble, the Compliance Verification Report provides establishments with a summary of their marketed products as reflected in FDA files. Establishments are asked to update this information directly on the report, instead of on Form FDA–2657. Any new product information would continue to be listed on Form FDA–2657.

VI. Effective Date

FDA proposes that any final rule based on this proposal become effective 30 days after its date of publication in the Federal Register.

VII. Request for Comments

Interested persons may, on or before November 1, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 207 be amended as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

1. The authority citation for 21 CFR part 207 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 506, 507, 510, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 207.3 [Amended]

2. Section 207.3 *Definitions* is amended in paragraph (a)(3) by removing "§ 207.31(a)(2)" and adding in its place "§ 207.32(a)(2)".

§ 207.32 [Redesignated from § 207.31]

3. Section 207.31 is redesignated as § 207.32 and new § 207.31 is added to subpart C to read as follows:

§ 207.31 Compliance verification report.

(a) FDA periodically reviews the accuracy of its drug listing files by mailing to drug establishments a Compliance Verification Report, which is a copy of their individual drug listing file. The Compliance Verification Report contains information on some or all of the drug products listed by the establishment.

(b) An establishment that receives a Compliance Verification Report shall review and correct the information in the Compliance Verification Report and return it to FDA within 30 days of its receipt. Information supplied in response to the Compliance Verification Report that fulfills an information requirement under § 207.30 need not be resubmitted on Form FDA–2657.

(c) Establishments that have drug products in commercial distribution, which are not listed on the Compliance Verification Report, shall submit these drug product listings to FDA on Form FDA-2657 (and Form FDA–2658, when reporting for a private label distributor), in accordance with 207.20, 207.21, 207.22, 207.25, and 207.30.

Dated: June 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21245 Filed 8–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 334

[Docket No. 78N–036L]

RIN 0905–AA06

Laxative Drug Products For Over-The-Counter Human Use; Proposed Amendment to The Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking to amend the tentative final monograph for over-the-counter (OTC) laxative drug products to include conditions under which docusate salts, i.e., docusate calcium, docusate potassium, and docusate sodium, are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the Panel), public comments on the advance notice of proposed rulemaking that was based on those recommendations, and a comment submitted in response to the tentative final monograph for OTC laxative drug products that was published in the **Federal Register** of January 15, 1985 (50 FR 2124). This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 31, 1993. New data by September 2, 1994. Comments on the new data by November 2, 1994. Written comments on the agency's economic impact determination by December 31, 1993.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Panel, which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. The agency's proposed regulation, in the form of a tentative final monograph, for OTC laxative drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2124).

In the advance notice of proposed rulemaking, the Panel recommended that docusate calcium [1], docusate potassium [2], and docusate sodium [3] in the recommended dosages be classified in Category I (generally recognized as safe and effective) as OTC stool softener laxatives (40 FR 12902 at 12912). Subsequently, FDA became aware of information in animal studies implicating docusate sodium as a potential animal teratogen (Refs. 1, 2, and 3), thereby raising questions about the Panel's conclusions and recommendations for these laxative ingredients. Because evaluation of the animal studies had not been completed when FDA published the tentative final monograph on OTC laxative drug products in 1985, the agency did not discuss docusate salts and stated that a separate document would be published to address the status of these ingredients (50 FR 2124 at 2125). The agency has completed its evaluation of these animal studies and is now proposing that these docusate salts are safe and effective for OTC laxative use.

In response to the advance notice of proposed rulemaking, seven manufacturers, one university, and one individual submitted comments concerning docusate salts. These comments are also addressed in this document. Copies of the comments received are on public display in the Dockets Management Branch (address above).

The chemical name for docusate sodium is butanedioic acid, sulfo-, 1,4-bis(2-ethylhexyl)ester, sodium salt (Ref. 4). Docusate calcium, docusate potassium, and docusate sodium are chemically identical, with the exception of the substitution of a calcium or potassium salt for the sodium salt. The agency is unaware of any data demonstrating that the substitution of the calcium or potassium ion for the sodium ion in the docusate formulation would have a significant effect on the biological activity of the docusate anion. The agency believes that any toxicological effects are due to the organic portion of the molecule, and not to the calcium, potassium, or sodium portion.

Oral administration of docusate calcium and docusate sodium has been studied in pregnant rats (Ref. 1). Ingestion of docusate calcium at levels of 1,500 to 2,000 milligrams per kilogram (mg/kg) body weight or docusate sodium at levels of 2,000 mg/kg by pregnant rats throughout gestation days 6 through 15 resulted in increased fetal resorptions and produced significant incidences of fetal malformations, consisting primarily of exencephaly frequently associated with spina bifida and microphthalmia. However, 2,000 mg/kg of docusate calcium was not teratogenic when ingested for shorter periods of time (days 6 to 8, 8 to 10, or 10 to 12) during gestation.

In the same study, gavage dosing of docusate calcium at 750 mg/kg per day (mg/kg/day) during days 6 to 15 of gestation resulted in fetal resorptions and skeletal abnormalities, primarily incomplete ossification of cranial bones. In most instances, mean maternal weight gain was somewhat reduced after gavage doses of 750 mg/kg. Docusate calcium administered by gavage to pregnant rats at 1,000 and 1,500 mg/kg during various 3-day periods of gestation was not teratogenic but did cause fetal resorption and maternal deaths. The data from these teratology studies in the rat support a no-effect level of 500 mg/kg of docusate calcium, which is 100 times the human laxative dose of 300 mg/day.

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[1] The Panel designated this ingredient "dioctyl calcium sulfosuccinate." However, docusate calcium is currently the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

[2] The Panel designated this ingredient "dioctyl potassium sulfosuccinate." However, docusate potassium is currently the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

[3] The Panel designated this ingredient "dioctyl sodium sulfosuccinate." However, docusate sodium is currently the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

A teratology study of docusate calcium in dogs was inconclusive (Ref. 2). Pregnant dogs received 0, 50, or 200 mg/kg of docusate calcium in capsules during gestational days 14 through 30. Fetuses were surgically delivered on the 55th day of gestation and examined for gross external, internal soft tissue, and skeletal malformations. There were some minor fetal skeletal malformations in the 50 mg/kg group. However, because of the lack of good controls, it could not be determined whether these were embryotoxic effects of docusate calcium or reflected normal skeletal variations in this strain. The toxic effects in the 200 mg/kg treated group included resorptions, fetal weight loss, and malformations. However, at this dose, it was not possible to distinguish the teratogenic effects of the docusate calcium from the effects of general maternal toxicity.

A three-generation reproduction dietary exposure study of docusate sodium at levels of 0, 0.5, and 1 percent in the diet was conducted in rats (Ref. 3). Mothers received 0.5 percent (approximately 440 mg/kg/day) or 1 percent (approximately 890 mg/kg/day) of docusate sodium prior to the first mating. Successive generations were divided into two groups: (1) Mothers who were fed docusate sodium continuously, and (2) mothers who stopped receiving docusate sodium 24 hours prior to expected delivery and did not receive any throughout lactation. Pups from group one mothers exhibited decreased mean body weight and increased mortality prior to weaning compared to pups from group two mothers. No malformations were noted among any of the pups. However, because it was not reported whether the births were supervised, it was not possible to rule out the possibility that the mothers ate any deformed pups. No maternal toxicity from docusate sodium was noted. The agency was unable to assign a no-effect level for docusate sodium in this study because preweaning deaths occurred at the lowest dose level tested. The design of the study was inadequate to determine whether docusate sodium was directly or indirectly toxic to pups because the docusate may have altered the taste of the milk, which the pups then refused to drink, or because the mothers were not secreting milk.

The possibility exists in these rat studies that docusate sodium produced teratogenic and reproductive effects in rats by interfering with pantothenic acid by blocking its absorption or perhaps its utilization. Pantothenic acid deficiency in pregnant rats has been associated with resorptions and malformations, most frequently exencephaly and eye malformations. These fetal effects can occur in the absence of obvious signs of toxicity in pregnant rats. A possible mechanism by which docusate calcium and docusate sodium create a deficiency of pantothenic acid has been ascribed to micellar entrapment of pantothenate in the small intestine by high levels of docusate. One unresolved matter, however, was that concentrations of pantothenic acid were not determined in maternal liver or in the fetus, so it was not known if a general deficiency state was created or if the docusate interfered with the cellular activities of pantothenic acid in the fetus.

FDA considered the above data as suggesting that docusate salts were teratogenic in animals, thereby suggestive of possible human effects. Therefore, FDA convened a panel of scientists from other agencies within the Federal government to review the available data, information, and views concerning the teratogenicity and reproductive toxicity of docusate salts. The Dioctyl Sodium Sulfosuccinate Scientific Review Panel (the DSS Panel) issued its report in March 1984 (Ref. 5) with the following conclusions:

(1) Docusate calcium, docusate potassium, and docusate sodium should not be considered potential human teratogens.

(2) The findings of the three-generation reproduction study of docusate sodium in rats (in which treatment was continued through lactation and a significant decrease in pup survival was observed during lactation) provide grounds for concern that should be explored further.

(3) There was no compelling reason to alter the accepted 1,000-fold safety factor (used for teratogens by FDA) based on the data reviewed.

(4) For therapeutic uses of docusate sodium, a safety margin of nearly 120-fold is adequate.

(5) The data suggest that docusate sodium has the potential to produce adverse reproductive effects in the laboratory animals treated with large doses, but it appears the human risk is very low.

The DSS Panel, therefore, recommended conduct of the following studies:

(1) A standard FDA three-generation reproductive study of docusate sodium using rats and mice and including pair-fed and untreated controls.

(2) Additional pharmacokinetics and biotransformation studies of docusate sodium to include a determination of the occurrence of docusate sodium and its metabolites in breast milk.

(3) Continued epidemiologic surveillance of pregnancy outcome in women treated with docusate salts.

Subsequently, FDA amended its proposed requirements to:

(1) Defer the reproduction study in mice, pending completion and evaluation of the reproduction study in rats, (2) delete the pair-fed controls in the reproduction study, and (3) require performance of a pharmacokinetic study if toxic effects in rat pups during lactation were confirmed.

A final report of the rat reproduction study was submitted to the agency as a citizen petition to reopen the administrative record for this rulemaking (Ref. 6). In this study, docusate sodium was administered in the diet to three successive generations of male and female rats with 30 rats per sex per group (30/sex/group) at levels of 0.0, 0.1, 0.5, and 1 percent. The males in the original parental group (F0) were exposed to the diets for at least 10 weeks and the females were exposed for 2 weeks prior to mating that produced the F1 litters. All descendant animals were exposed to the test material in utero, while nursing, continuously from weaning throughout mating, gestation, and lactation. The exceptions were the F3 litters that were sacrificed after weaning and animals from other generations that were culled or not selected for parents of the succeeding generation. The report included summaries and individual data on mean body weight, body weight gain, food consumption, and compound consumption for males and females during the premating phases; group mean and individual body weight and food intake data and compound consumption for females during gestation and lactation; male fertility indices, summary and individual litter data through day 21 of lactation, and gross pathological observations of all adults and the F3 weanlings.

After reviewing these data, the agency concluded that docusate sodium administered in the diet to three successive generations of rats at levels of 0.5 percent and 1 percent caused a reduction in body weights for parental males of all generations and for F1 and F2 females. In addition, the pup weights were lower than those of the controls. There was no evidence of effects on growth or reproductive performance except for the isolated incidence of an increased number of pups born dead (stillbirths) in the F3 litters of the 1 percent group, and some pups in the F2 and F3 litters had suckling problems.

The high percentage (90 percent or greater) of pup survival to weaning in this study might be attributed to the

high quality of the conduct of the study and the analysis of the diet for pantothenic acid content to ensure that the level of the vitamin was optimal. After further evaluation, the agency concluded that the teratogenicity seen in earlier studies of docusate calcium and docusate sodium in this species (Ref. 3) was due specifically to a surfactant induced deficiency of the B vitamin calcium pantothenate.

To address the question of human risk involving use of docusate sodium and a possible pantothenic acid deficiency, the agency examined the literature to determine if there was any evidence of this problem. The agency was unable to find any clinical evidence in the literature that showed pantothenic acid deficiency or possible toxicity problems, even to a moderate degree. The distribution of pantothenic acid in foods is so widespread that an occurrence of a deficiency of the vitamin is probably extremely rare (Refs. 7 and 8). In fact, evidence of dietary deficiency of pantothenic acid alone has not been clinically recognized in man. A deficiency syndrome has been experimentally induced in human volunteers by administration of a metabolic antagonist, omega-methylpantothenic acid, imposed on a pantothenic acid-deficient diet. However, it has been impossible to induce an isolated deficiency of the vitamin in less than at least 9 months on a natural diet alone (Ref. 8). The customary intake of pantothenic acid from ordinary foods in the United States is approximately 5 to 20 mg/day (Ref. 8). The estimated safe and adequate daily dietary intake of pantothenic acid for adults is estimated to be 5 to 10 mg/day (Ref. 8). Therefore, the probability of observing pantothenic acid deficiency in the United States is considered to be extremely low.

A search of the literature from 1985 through 1991 has revealed no articles suggesting teratogenic or reproductive problems associated with docusate salts. Results of epidemiologic surveillance of pregnancy outcome in women treated with docusates have been inconclusive, supporting neither safety nor increased risk of birth defects (Ref. 9).

The usual daily human dose of docusate sodium as a laxative is 50 to 500 mg/day (Ref. 10), which is 1 to 10 mg/kg/day based on the FDA standard of an average adult weight of 50 kg. The no adverse effect level from teratology studies in rats is 500 mg/kg/day; for reproductive toxicity it is about 50 to 150 mg/kg/day. After considering these data, the agency has determined that the human dosages of docusate salts proposed in this tentative final monograph do not pose reproductive or teratological problems and that these ingredients can be generally recognized as safe and effective OTC laxatives. The agency is amending § 334.20 to include docusate salts as stool softener laxatives. In addition to the specific labeling proposed for these ingredients in § 334.62 in this document, docusate salts will also be required to bear the labeling proposed for all laxative drug products in § 334.50 (50 FR 2124 at 2153). Section 334.50 limits use of the product to "relief of occasional constipation" and proposes the following warnings: (1) "Do not use laxative products when abdominal pain, nausea, or vomiting are present unless directed by a doctor," (2) "If you have noticed a sudden change in bowel habits that persists over a period of 2 weeks, consult a doctor before using a laxative," (3) "Laxative products should not be used for a period longer than 1 week unless directed by a doctor," (4) "Rectal bleeding or failure to have a bowel movement after use of a laxative may indicate a serious condition. Discontinue use and consult your doctor," (5) "Do not use this product if you are on a low salt diet unless directed by a doctor" for products containing more than 5 milliequivalents (115 mg) of sodium in the maximum recommended daily dose, and (6) "Do not use this product if you have kidney disease unless directed by a doctor" for products containing more than 25 milliequivalents (975 mg) of potassium in the maximum recommended daily dose. (In the **Federal Register** of April 25, 1991 (56 FR 19222), the agency proposed to amend the general labeling provisions for OTC drug products to provide uniform sodium content labeling for all orally administered OTC drug products. Should that proposed amendment be published as a final rule, any existing requirements relating to sodium labeling in the laxative monograph will be superseded.) The agency believes that the proposed labeling will provide for the safe and effective OTC use of docusate salts. Accordingly, in this amendment to the tentative final monograph for OTC laxative drug products, the agency is proposing that docusate calcium (oral dosage forms), docusate potassium (rectal enema dosage form), and docusate sodium (oral dosage forms) be classified as Category I stool-softener laxative ingredients at the dosages discussed below.

References

(1) Hoechst-Roussel Pharmaceuticals,Inc., "Teratogenic Evaluation of Larger Oral Dosages of Dioctyl Calcium Sulfosuccinate (and Dioctyl Sodium Sulfosuccinate) in the Rat," Experiment 0972–45, OTC Vol. 090043, Docket No. 78N–036L, Dockets Management Branch.

(2) International Research and Development Corp. for Hoechst-Roussel Pharmaceuticals, Inc., "DCS Teratology Study in Beagle Dogs," in the final report of the Dioctyl Sodium Sulfosuccinate Scientific Review Panel, app. 4, Attachment 62, March 1984, Docket No. 84N-0184, Dockets Management Branch.

(3) American Cyanamid Co., "Aerosol OT: Successive Generation Studies in Rats," Report No. 70–239, OTC Vol. 090093, Docket No. 78N–036L, Dockets Management Branch.

(4) "USAN and the USP Dictionary of Drug Names," edited by C. A. Fleeger, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 220, 1992.

(5) Final Report of the Dioctyl Sodium Sulfosuccinate Scientific Review Panel, "Reproductive Toxicity of Dioctyl Sodium and Calcium Sulfosuccinate—A Report to the Acting Commissioner of Food and Drugs," March 1984, Docket No. 84N–0184, Dockets Management Branch.

(6) Comment No. CP6, Docket No. 78N–036L, Dockets Management Branch.

(7) Shils, M. E., and V. R. Young, "Modern Nutrition in Health and Disease," 7th ed., Lea & Febiger, Philadelphia, pp. 383–387, 1988.

(8) Gennaro, A., editor, "Remington's Pharmaceutical Sciences," 18th ed., Mack Publishing Co., Easton, PA, pp. 1016–1017, 1990.

(9) Rosa, F. W., "Birth Defect Diagnoses with First Trimester Docusate Exposures in Michigan Medicaid Data," draft of unpublished study, dated June 2, 1987, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(10) "USP DI, Drug Information for the Health Care Professional," Vol. I, 13th ed., United States Pharmacopeial Convention, Inc., Washington, pp. 1717–1759, 1993.

I. The Agency's Tentative Conclusions on The Comments

1. One comment requested that the Panel's recommendation in § 334.20(c), which provides for an oral dosage form of docusate sodium, be amended to provide for a rectal dosage form of this ingredient. The comment argued that the Panel provided for a rectal dosage form of docusate potassium in § 334.20(b) and concluded that the calcium, potassium, and sodium docusate salts are safe and effective in the amounts usually taken orally or rectally in laxative drug products (40 FR 12902 at 12912). The comment concluded that the monograph should provide for the same rectal dosage of docusate sodium in § 334.20(c) as present for docusate potassium in § 334.20(b).

The agency has reviewed the Panel's recommendations regarding oral and rectal dosage forms of docusate salts (40 FR 12902 at 12941). The Panel recommended as Category I an oral

dosage for docusate calcium and docusate sodium of 50 to 360 mg daily for adults and children over 12 years of age. For docusate calcium, the Panel recommended an oral dosage of 50 to 150 mg daily for children 2 to 12 years of age, and 25 mg daily for infants under 2 years of age. For docusate sodium, the recommended dosage was 50 to 150 mg daily for children 2 to 12 years of age, and 20 to 25 mg for infants under 2 years of age. The Panel also recommended as Category I a rectal dosage of docusate potassium of 50 to 250 mg daily for adults and children over 12 years of age, and 100 mg daily for children 2 to 12 years of age.

As discussed above, docusate calcium, docusate potassium, and docusate sodium are chemically identical, with the exception of the substitution of a calcium or potassium salt for the sodium salt. The data on the marketed products submitted to the Panel included information only on oral dosage forms for docusate calcium and docusate sodium, and on rectal enema dosage forms for docusate potassium. The agency is unaware of any data demonstrating that the substitution of the calcium or potassium ion for the sodium ion in the docusate formulation would have a significant effect on the biological activity of the docusate anion. The agency is aware of several products in which docusate potassium is marketed in an oral dosage form (Refs. 1 and 2) and no products in which docusate calcium is marketed in a rectal dosage form (Refs. 2 and 3). Although the American Drug Index lists three products in which docusate sodium is marketed in a rectal dosage form (Ref. 3), the manufacturers of these products state that the products are not currently marketed (Refs. 4, 5, and 6). No safety or effectiveness data have been submitted for any of these products and, in addition, no data have been submitted to show that the individual docusate salts are therapeutically equivalent when used interchangeably in oral or rectal dosage forms. Thus, the agency concludes that safety and effectiveness have been established only for the docusate salt dosage forms recommended by the Panel, and these are the only dosage forms being included in this tentative final monograph. Manufacturers of docusate salt products in other dosage forms, as noted above, need to submit data on these products to support the use of the various docusate salts interchangeably in both oral and rectal dosage forms. Such data should address the safety of the docusate salt in the dosage form not included in the monograph and the pharmacologic/therapeutic equivalence of the specific docusate salt(s) in both oral and rectal dosage forms. The agency invites interested persons to submit such data for consideration.

References

(1) "Physicians' Desk Reference forNonprescription Drugs," 14th ed., Medical Economics Data, Montvale, NJ, pp. 668–669, 1993.

(2) Curry, C. E., and D. Tatum-Butler, "Laxative Products" in "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, pp. 343–378, 1990.

(3) Billups, N. F., and S. M. Billups, editors, "American Drug Index," 36th ed., J. B. Lippincott Co., St. Louis, pp. 204–205,1991.

(4) Memorandum of telephone conversation between L. Gilbert, WebconPharmaceuticals, and D. Hernanedz, FDA, dated September 14, 1992, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(5) Memorandum of telephone conversation between S. Kolakowsky, Carter Products, and D. Hernandez, FDA, dated September 14, 1992, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(6) Memorandum of telephone conversation between S. Scheindlin, Lemmon Co., and D. Hernandez, FDA, dated September 14, 1992, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

2. Several comments objected to the wording of the drug interaction precaution recommended by the Panel in § 334.62(b), which states: "Do not take this product if you are presently taking a prescription drug or mineral oil." One comment argued that this drug interaction precaution was unnecessarily discriminatory and should be deleted because many food products that are consumed daily contain natural and synthetic emulsifiers, surfactants, and "softening agents" that may cause interactions with oral prescription drugs or mineral oil. Two of the comments argued that unless specific adverse drug interactions can be proven, it is not appropriate to require a general precaution statement. Another comment argued that it would be more useful to the consumer if known specific drugs, such as mineral oil, that interact with stool softeners were listed rather than using a general warning against the use of stool softeners with prescription drugs. Three of the comments urged that the drug interaction precaution in § 334.62(b) be further amended to add the statement "* * * except on the advice of a physician," because doctors often recommend the concomitant use of a laxative product to counteract the constipation problem that may occur with some prescription drugs. One comment further suggested that the negatively worded drug interaction precaution be revised to read, "Consult your physician if you are taking mineral oil," because this positively worded statement would help consumers avoid the chance of a drug interaction.

The agency does not consider the drug interaction precaution statement in § 334.62(b) to be discriminatory because the laxative monograph sets forth conditions for the safe and effective use of ingredients for drug and not food use. Although foods may contain surfactants such as those found in stool softener laxatives, these ingredients are generally present in foods in much lower amounts than in laxatives and, therefore, pose a much lower risk of interaction with drugs.

The Panel suggested a possible interaction between the stool softener ingredients and prescription drugs significant enough to justify a warning and stated that docusate sodium possesses potent detergent properties that may facilitate gastrointestinal or hepatic uptake of other drugs, thereby potentiating their activities (40 FR 12902 at 12912). The agency, however, has been unable to verify that any detrimental interaction occurs. A search of scientific literature reveals no conclusive data or information to substantiate this suggested problem (Refs. 1 through 7). One pilot bioavailability study (Ref. 7) suggested that there is a reduction in tetracycline availability due to docusate sodium, but the results were not statistically significant in this small study. The agency invites any interested person to submit data showing an interaction between docusate salts and any prescription drug for the agency's consideration.

The agency agrees with the Panel that the absorption of mineral oil may be enhanced by docusate sodium and these agents should not be taken concurrently (40 FR 12902 at 12912).

The agency disagrees with the suggestion that the negatively worded drug interaction precaution "Do not take this product if * * *" would be more helpful to consumers if reworded to read, "Consult your physician if * * *," because the key advice is that consumers should not take the drug under certain circumstances. The wording suggested by the comment could easily mislead consumers into thinking that they should take the product first and consult their physician later. The agency agrees, however, that the drug interaction precaution should be expanded to allow concomitant use of stool softeners with mineral oil if

deemed necessary by a doctor. In an effort to make the labeling clearer and easier to understand, the phrase suggested by several comments "* * * except on the advice of a physician" has been simplified and reworded to "* * * unless directed by a doctor." Accordingly, in this tentative final monograph, this drug interaction precaution is revised to read: "Drug interaction precaution: Do not take this product if you are presently taking mineral oil, unless directed by a doctor."

References

(1) Brunton, L. L., "Agents AffectingGastrointestinal Water Flux and Motility, Digestants, and Bile Acids" in "The Pharmacological Basis of Therapeutics, 8th ed., edited by A. G. Gilman, et al., Pergamon Press Co., Inc., New York, pp. 914–932, 1990.

(2) Osol, A., R. Pratt, and A. Gennaro,"The United States Dispensatory," 27th ed., J. B. Lippincott Co., Philadelphia, pp. 438–439, 1973.

(3) Curry, C. E., and D. Tatum-Butler, "Laxative Products" in "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, pp. 343-378, 1990.

(4) "USP DI, Drug Information for the Health Care Professional," Vol. I, 13th ed., United States Pharmacopeial Convention, Inc., Washington, pp. 1717–1759, 1993.

(5) "Drug Evaluations," 6th ed.,American Medical Association, Chicago, p. 982, 1986.

(6) Gennaro, A., editor, "Remington'sPharmaceutical Sciences," 18th ed., Mack Publishing Co., Easton, PA, pp. 1016–1017, 1990.

(7) Shah, V. P., et al., "Influence of Dioctyl Sodium Sulfosuccinate on the Absorption of Tetracycline," Biopharmaceutics and Drug Disposition, 7:27–33, 1986.

3. One comment expressed concern about the Panel's Category I classification of docusate sodium in combination with stimulant laxatives in § 334.32(a), which included as oral dosage forms: (1) Docusate sodium and casanthranol, (2) docusate sodium and danthron, (3) docusate sodium and phenolphthalein, (4) docusate sodium and senna concentrate, and (5) docusate calcium and danthron. The comment cited three references that discuss the potential dangers of such combinations (Refs. 1, 2, and 3). The comment felt that the Panel's report was well-researched, but expressed surprise that these references were not mentioned.

The agency has reviewed the references cited by the comment and notes that they were not reviewed by the Panel. The article by Smith (Ref. 1) deals with possible damage to the myenteric plexus from long-term administration of anthraquinone laxatives and does not address any problems or dangers arising from the administration of combinations of docusate sodium and stimulant laxatives. The other two references (Refs. 2 and 3) both quote the same study in which the oral LD50 for danthron (1,8-dihydroxyanthraquinone) in rats was lowered from over 22 mg/kg when administered alone to 9 mg/kg when administered in combination with an unspecified amount of docusate sodium. The study concludes that this effect can only be due to increased absorption of danthron because the animals died with symptoms of systemic toxicity.

A well-designed, well-controlled study by Case, Smith, and Nelson (Ref. 4) in mice shows considerably higher LD50 values of 7 grams per kilogram (g/kg) for danthron, 2.64 g/kg for docusate sodium, and 3.42 g/kg for a danthron/docusate sodium mixture (1:2 ratio). This study attributes the lower LD50 values cited in the two earlier studies (Refs. 2 and 3) to a typographical error in the original study. Case, Smith, and Nelson point out that the mg/kg values are more logical and in closer agreement with current findings if read in terms of g/kg rather than mg/kg. Case, Smith, and Nelson also conducted a 1-year chronic toxicity study in dogs (Ref. 4). No toxic effects and no evidence of any changes in the myenteric plexus at levels of 15 mg/kg/day of danthron in combination with 30 mg/kg/day of docusate sodium were shown. Because these levels are considerably lower than the g/kg amounts discussed above, the agency concludes that the comment's concerns have been adequately addressed by subsequent reports in the literature.

In January 1987, a leading U. S. pharmaceutical manufacturer informed FDA that it would voluntarily cease manufacture and distribution of products containing danthron. The company's decision was partly in response to published studies in Britain and Japan that strongly suggested that chronic administration of high doses of danthron to rats and mice resulted in the development of intestinal and liver tumors and that danthron is, therefore, potentially a carcinogen in man (Refs. 5 and 6). Danthron, in common with other anthraquinone compounds, has also been shown to exhibit a positive mutagenic effect in some in vitro models (Refs. 7 and 8). FDA subsequently initiated a total recall to the retail-dispensing level of all danthron-containing drug products, by sending a recall letter to all registered drug firms and distributors (Ref. 9). FDA stated that "danthron toxicity in humans has not been specifically demonstrated, but because of potential risk, FDA has requested an immediate halt to all manufacturing, relabeling, repackaging, and further distribution of human drug products containing danthron" (Ref. 10). Accordingly, FDA is not including the combination of docusate sodium and danthron in this tentative final monograph. The other four docusate salt and stimulant laxative combination products mentioned by the comment and recommended as Category I by the Panel are being proposed for inclusion in the monograph in the absence of specific data indicating a safety problem.

References

(1) Smith, B., "Effect of Irritant Purgatives on the Myenteric Plexus in Man and the Mouse," Gut, 9:139–143, 1968.

(2) Smith, B., "The Neuropathology of the Alimentary Tract," The Williams and Wilkins Co., Baltimore, pp. 92–98, 1972.

(3) Godfrey, H., "Dangers of Dioctyl Sodium Sulfosuccinate in Mixtures," Journal of the American Medical Association, 215:643, 1971.

(4) Case, M. T., J. K. Smith, and R. A. Nelson, "Acute Mouse and Chronic Dog Toxicity Studies on Danthron, Dioctyl Sodium Sulfosuccinate, Paloxalkol and Combinations,"Drug and Chemical Toxicology, 1:89–101, 1977.

(5) Mori, H., et al., "Induction ofIntestinal Tumors in Rats by Chrysazin," British Journal of Cancer, 52:781–783, 1985.

(6) Mori, H., et al., "Carcinogenicity of Chrysazin in Large Intestine and Liver of Mice," Japanese Journal of Cancer Research, 77:871–876, 1986.

(7) Brown, J. P., and R. J. Brown, "Mutagenesis by 9,10-Anthraquinone Derivatives and Related Compounds in Salmonella Typhimurium," Mutation Research, 40:203–224, 1976.

(8) Tikkanen, L., T. Matsushima, and S. Natori, "Mutagenicity of Anthraquinones in the Salmonella Preincubation Test," Mutation Research, 116:297–303, 1983.

(9) FDA drug recall letter concerningdanthron-containing drug products, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(10) FDA press release on danthron drug products, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

4. One comment requested that recommended § 334.32(b)(1) be amended to provide for a combination of docusate sodium and glycerin in a rectal dosage form, in addition to the combination of docusate potassium and glycerin recommended by the Panel. The comment argued that historically docusate sodium is the best-known and most widely used of the docusate salts, that it is pharmaceutically compatible with glycerin, and that it is no less effective and no more toxic than docusate potassium.

The agency is unaware of any data demonstrating that the substitution of the sodium ion for the potassium ion in

the docusate formulation would have a significant effect on the biologic activity of the docusate anion (see comment 1). However, no data have been submitted to support the assumption that the effectiveness of docusate sodium would be comparable to docusate potassium in a combination rectal dosage formulation with glycerin or that the toxicity would not be increased. Therefore, the agency is not including in this tentative final monograph the rectal dosage form combination recommended by the comment. The agency is including in this tentative final monograph the two rectal enema dosage combinations classified by the Panel as Category I: (1) Docusate potassium and glycerin, and (2) docusate potassium and sorbitol.

II. The Agency's Tentative Conclusions and Adoptionof The Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and III Conditions

1. Summary of Ingredient Categories

The agency has reviewed the docusate salt active ingredients submitted to the Panel, as well as other data and information available at this time, and concurs with the Panel's Category I classification of docusate calcium and docusate sodium in oral dosage forms and docusate potassium in a rectal dosage form for use as OTC laxative drug products. As a convenience to the reader, the following list is included as a summary of the Panel's recommendations and the agency's proposed categorization of stool softener active ingredients.

Active ingredient	Panel	Agency
Docusate calcium	I	I
Docusate potassium	I	I
Docusate sodium	I	I

2. Testing of Category II and Category III Conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any docusate salt condition not included in this tentative final monograph by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph conditions for docusate salt ingredients with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The wording of the drug interaction precaution recommended by the Panel in § 334.62(b) has been revised to read: "Drug interaction precaution: Do not take this product if you are presently taking mineral oil, unless directed by a doctor." (See comment 2.)

2. The agency is not including in this tentative final monograph the combinations of docusate calcium or docusate sodium and danthron because of a 1987 recall of all danthron-containing products based on evidence of potential carcinogenicity in humans. (See comment 3.)

3. The Panel recommended dosages for children under 2 years of age for docusate calcium and docusate sodium. The agency, however, in the tentative final monograph for OTC laxative drug products (50 FR 2124 at 2148) proposed that dosages for children under 2 years of age not appear in the OTC labeling because of the concern that constipation in infants may be a sign of a more serious condition that should be properly diagnosed by a doctor. Therefore, dosages for children under 2 years of age for docusate calcium and docusate sodium are being included in this tentative final monograph only under professional labeling.

4. The Panel recommended docusate sodium and senna concentrate as a permitted active ingredient combination (40 FR 12902 at 12921). However, in the tentative final monograph for OTC laxative drug products, the dosages for senna preparations were revised to provide dosages for sennosides A and B only (50 FR 2124 at 2140 and 2141). Therefore, sennosides A and B are being used to describe this combination in this amendment.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC laxative drug products, is a major rule.

In the economic assessment, the agency also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC laxative drug products is not expected to pose such an impact on small businesses. All conditions reviewed by the Panel are proposed for inclusion in the monograph except one condition that was removed from the market in 1987. Only some minor relabeling will be necessary. This will be a one-time expense when the final monograph is issued. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on laxative drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC laxative drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on OTC laxative drug products containing docusate salts as active ingredients, a period of 120 days from the date of publication of this proposed rule in the **Federal Register** is being provided for comments and data on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 31, 1993, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the

Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 31, 1993. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled hearing will be announced in the **Federal Register**.

Interested persons, on or before September 2, 1994, may also submit in writing new data demonstrating safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before November 2, 1994. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47740). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addresssed to the Dockets Management Branch (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only comments and data submitted prior to the closing of the administrative record on November 2, 1994. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner of Food and Drugs finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR part 334

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 334 (as proposed in the **Federal Register** of January 15, 1985, 50 FR 2124) be amended as follows:

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 334 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 334.20 is amended by adding text to read as follows:

§ 334.20 Stool softener laxative active ingredients.

The active ingredient of the product consists of any of the following when used within the dosage limits established for each ingredient in § 334.62(d):

(a) Docusate calcium.

(b) Docusate potassium.

(c) Docusate sodium.

3. Section 334.30 is amended by adding new paragraphs (i), (j), and (k) to read as follows:

§ 334.30 Permitted combinations of active laxative ingredients.

* * * * *

(i) The following stool softener laxative ingredient may be combined with the following stimulant laxative ingredients provided the combination is labeled according to §§ 334.60 and 334.62:

(1) Docusate sodium identified in § 334.20(c) and casanthranol identified in § 334.18(c)(1).

(2) Docusate sodium identified in § 334.20(c) and phenolphthalein identified in § 334.18(g).

(3) Docusate sodium identified in § 334.20(c) and sennosides A and B identified in § 334.18(h).

(j) The following stool softener laxative ingredient may be combined with the following bulk-forming laxative ingredient provided the combination is labeled according to §§ 34.52 and 334.62: Docusate sodium identified in § 334.20(c) and sodium carboxymethylcellulose identified in § 334.10(b)(2).

(k) The following stool softener laxative ingredient may be combined with the following hyperosmotic laxative ingredients provided the combination is labeled according to §§ 334.54 and 334.62:

(1) Docusate potassium identified in § 334.20(b) and glycerin identified in § 334.12(a).

(2) Docusate potassium identified in § 334.20(b) and sorbitol identified in § 334.12(b).

4. Section 334.62 is amended by adding text to paragraphs (c) and (d) to read as follows:

§ 334.62 Labeling of stool softener laxative drug products.

* * * * *

(c) *Warnings.* In addition to the warnings identified in § 334.50(b), the labeling of the product contains the following statement under the heading "Drug Interaction Precaution": "Do not take this product if you are presently taking mineral oil, unless directed by a doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions."

(1) *For products containing docusate calcium identified in § 334.20(a).* Adults and children 12 years of age and over: oral dosage is 50 to 360 milligrams. Children 2 to under 12 years of age: oral dosage is 50 to 150 milligrams. The dose may be taken as a single daily dose or in divided doses. Children under 2 years of age: consult a doctor.

(2) *For products containing docusate potassium identified in § 334.20(b).* Adults and children 12 years of age and over: rectal enema dosage is 50 to 250 milligrams in a single daily dose. Children 2 to under 12 years of age: rectal enema dosage is 100 milligrams in a single daily dose. Children under 2 years of age: consult a doctor.

(3) *For products containing docusate sodium identified in § 334.20(c).* Adults and children 12 years of age and older: oral dosage is 50 to 360 milligrams. Children 2 to under 12 years of age: oral dosage is 50 to 150 milligrams. This dose may be taken as a single daily dose or in divided doses. Children under 2 years of age: consult a doctor.

5. Section 334.80 is amended by revising the introductory text and by adding paragraphs (c)(12) and (c)(13) to read as follows:

§ 334.80 Professional labeling.

The labeling of the product provided to health professionals (but not to the general public) contains the following information in addition to the labeling identified in §§ 334.50, 334.52, 334.54, 334.56, 334.58, 334.60, and 334.62.

* * * * *

(c) * * *

(12) *For products containing docusate calcium identified in § 334.20(a).* Children under 2 years of age: oral dosage is 25 milligrams in a single daily dose or in divided doses.

(13) *For products containing docusate sodium identified in § 334.20(c).* Children under 2 years of age: oral dosage is 20 to 50 milligrams in a single daily dose or in divided doses.

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21368 Filed 9–1–93; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400079A; FRL–4643–7]

Chromium, Nickel, and Copper in Stainless Steel, Brass, and Bronze; Toxic Chemical Release Reporting; Community Right-To-Know; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: EPA is extending the comment period for a denial of petition published in the **Federal Register** of June 29, 1993. The document denied three petitions to exempt reporting of chromium in stainless steel, nickel in stainless steel, and chromium, nickel, and copper in stainless steel, brass, and bronze from the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The original comment period ended August 30, 1993; the comment period is extended until November 1, 1993.

DATES: Written comments must be received by November 1, 1993.

ADDRESSES: Written comments must be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPPTS–400079.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free number: 800–535–0202, Toll number: 703–412–9877, TDD Toll free number: 800–553–7672.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1993 (58 FR 34738), EPA denied three petitions to exempt reporting of: (1) Chromium present in stainless steel, (2) nickel contained in stainless steel and other alloys, (3) chromium, nickel, and copper contained in stainless steels and solid copper based metals, such as brass and bronze, from section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The denial cited a lack of information concerning whether certain forms of brass, bronze, and stainless steel corrode under various processing, use, or disposal conditions. On August 13, 1993, EPA received a request for a 60–day extension of the comment period from the Industrial Fasteners Institute and the Forging Industry Association. In response, EPA is extending the comment period until November 1, 1993.

List of Subjects in 40 CFR Part 372

Chemicals, Community-right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: August 27, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21405 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–57

Collection of Debts by Federal Tax Refund Offset

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend 41 CFR chapter 105 by adding Part 105–57, Collection of Debts by Federal Tax Refund Offset. The proposed regulation establishes procedures for GSA to refer past due legally enforceable debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to GSA. The proposed regulation is needed because GSA is required to participate in the tax refund offset program by the Cash Management Improvement Act Amendments of 1992, Public Law 102–589.

DATES: All comments must be in writing and must be received on or before October 4, 1993.

ADDRESSES: Written comments should be sent to LeRoy Boucher, Director, Office of Finance (BC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Bernie Kanzler, Office of Finance, Financial Information Control Division (BCD) (202–501–2923).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects 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. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Part 105–57

Claims, Income taxes.

For the reasons set out in the preamble, GSA proposes to amend 41 CFR chapter 105 as follows:

PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

1. Part 105–57 is added to read as follows:

PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

Sec.

105–57.001 Purpose.
105–57.002 Applicability and scope.
105–57.003 Administrative charges.
105–57.004 Reasonable attempt to notify.
105–57.005 Notice requirement before offset.
105–57.006 Consideration of evidence.
105–57.007 Change in conditions after submission to IRS.

Authority: 31 U.S.C. 3720A, Pub. L. 98–369.

§ 105–57.001 Purpose.

This part establishes procedures for the General Services Administration (GSA) to refer past due debts to the Internal Revenue Service (IRS) for offset

against income tax refunds of taxpayers owing debts to GSA.

§ 105–57.002 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

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

(2) With respect to which, GSA has given the taxpayer at least 60 days, from the date of notification, to present evidence that all or part of the debt is not past due or legally enforceable, has considered such evidence, and has determined that the debt is past due and legally enforceable;

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

(4) Cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(5) Has been disclosed by GSA to a credit reporting agency, including a consumer reporting agency as authorized by 31 U.S.C. 3711(f);

(6) With respect to which, GSA has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any income tax refunds due the taxpayer;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations relating to eligibility of a debt for tax refund offset, codified at 26 CFR 301.6402–6T, have been satisfied.

§ 105–57.003 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 105–57.004 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, GSA must have used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103(m)(2) or (m)(4), within one year preceding the attempt to notify the debtor.

§ 105–57.005 Notice requirement before offset.

The notification provided by GSA to the debtor will inform the debtor how to go about presenting evidence to GSA that all or part of the debt is either not past due or is not legally enforceable.

§ 105–57.006 Consideration of evidence.

Evidence submitted by the debtor will be considered by officials or employees of GSA. Any determination that an amount of such debt is past due and legally enforcement will be made by such officials or employees. Evidence that the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

§ 105–57.007 Change in conditions after submission to IRS.

If the amount of a debt is reduced after submission by GSA and offset by IRS, GSA will refund to the debtor any excess amount and will promptly notify IRS of the refund. GSA will also promptly notify the IRS if, after submission of a debt to the IRS for offset, GSA:

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

(b) Receives a payment or credits a payment to an account submitted, or

(c) Receives notification that the debtor has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

Dated: June 25, 1993.

William B. Early, Jr.,

Acting Chief Financial Officer.

[FR Doc. 93–21316 Filed 9–1–93; 8:45 am]

BILLING CODE 6820–34–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 607

Claims Collection; Salary Offset

AGENCY: National Science Foundation.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation implements the Debt Collection Act of 1982, Public Law 97–365, as amended, codified in 5 U.S.C. 5514, which authorizes the Federal government to collect debts owed by a Federal employee to the United States through salary offset.

DATES: Comments must be submitted no later than October 4, 1993.

ADDRESSES: Send written comments to Jesse E. Lasken, Assistant General Counsel, National Science Foundation, 1800 G Street NW., room 501, Washington, DC 20550. Comments will be available for inspection at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jesse E. Lasken at 202–357–9435 or by writing to the address above.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency or his or her designee determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management, 5 CFR part 550, subpart K.

Paperwork Reduction Act

This regulation does not include provisions for information collection that require review and approval by the Office of Management and Budget under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq., and 5 CFR part 1320.

Regulatory Flexibility Act

The Director of NSF certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to individual Federal employees. Accordingly, no regulatory flexibility analysis is required.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 and no regulatory impact analysis is required.

List of Subjects in 45 CFR Part 607

Administrative offset, Administrative practice and procedures, Claims, Debt collection, Government employees, Wages.

Dated: August 30, 1993.

Lawrence Rudolph,

Acting General Counsel.

For the reasons set out in the preamble, part 607 of title 45 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 607—SALARY OFFSET

Sec.

607.1 Purpose and scope.
607.2 Definitions.
607.3 Applicability.
607.4 Notice requirements before offset.

607.5 Hearing.
607.6 Written decision.
607.7 Coordinating offset with another Federal agency.
607.8 Procedures for salary offset.
607.9 Refunds.
607.10 Statute of limitations.
607.11 Non-waiver of rights.
607.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514; E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K.

§ 607.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. These regulations apply to all federal employees who owe debts to the National Science Foundation (NSF) and to current employees of NSF who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his or her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq., and 4 CFR parts 101 through 105.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 607.2 Definitions.

For the purposes of this part the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined at 5 U.S.C. 102; an agency or court in the judicial branch; an agency of the legislative branch, including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the Federal government.

Certification means a written debt claim received from a creditor agency which requests the paying agency to offset the salary of an employee.

Chief Financial Officer means the Chief Financial Officer of NSF or such other official of NSF who is designated by the Chief Financial Officer to determine whether an employee is indebted to the United States and to take action to collect such debts.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means an amount owed by a Federal employee to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for social security, Federal, State or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting a hearing with respect to the existence or amount of a debt claimed, or the repayment schedule of a debt, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chief Financial Officer or of persons having supervision or control over the Chief Financial Officer.

NSF means the National Science Foundation.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

§ 607.3 Applicability.

These regulations are to be followed when:

(1) NSF is owed a debt by an individual who is a current employee of the NSF; or

(2) NSF is owed a debt by an individual currently employed by another Federal agency; or

(3) NSF employs an individual who owes a debt to another Federal agency.

§ 607.4 Notice requirements before offset.

(a) Salary offset shall not be made against an employee's pay unless the employee is provided with written notice signed by the Chief Financial Officer of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

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

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

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 et seq.;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The employee's opportunity to establish a written schedule for the voluntary repayment of the debt in lieu of offset;

(7) The employee's right to an oral hearing or a determination based on a review of the written record ("paper hearing") conducted by an impartial hearing official concerning the existence or the amount of the debt, or the terms of the repayment schedule;

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

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

(10) A statement that a final decision on the hearing (if requested) will be issued by the hearing official not later

than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures and/or statutory penalties;

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

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

(14) A statement that the proceedings regarding such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

§ 607.5 Hearing.

(a) *Request for hearing.* (1) An employee may file a petition for an oral or paper hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chief Financial Officer stating why the employee disputes the existence or amount of the debt or, in the case of an individual whose repayment schedule has been established other than by a written agreement, concerning the terms of the repayment schedule. The petition for a hearing must be received by the Chief Financial Officer not later than fifteen (15) calendar days after the employee's receipt of the offset notice, or notice of the terms of the payment schedule, unless the employee can show good cause for failing to meet the filing deadline.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 607.6 Written decision.

(a) The hearing official shall issue a final written opinion no later than 60 days after the filing of the petition.

(b) The written opinion will include a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt, if any; and the repayment schedule, if any.

§ 607.7 Coordinating offset with another Federal agency.

(a) When the NSF is the creditor agency and the Chief Financial Officer determines that an employee of another agency (i.e., the paying agency) owes a debt to the NSF, the Chief Financial Officer shall, as appropriate:

(1) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment was due, and the date the Government's right to collect the debt accrued, and that this part 607 has been approved by the Office of Personnel Management.

(2) Unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent is sent to the paying agency, the Chief Financial Officer must advise the paying agency of the action(s) taken under this part 607, and the date(s) they were taken.

(3) Request the paying agency to collect the debt by salary offset. If deductions must be made in installments, the Chief Financial Officer may recommend to the paying agency the amount or percentage of disposable pay to be collected in each installment;

(4) Arrange for a hearing upon the proper petitioning by the employee;

(b) When the NSF is the creditor agency and the employee is in the process of separating from the federal service, the NSF must submit its debt claim to the paying agency as provided in this part. The paying agency must certify the total amount collected, give a copy of the certification to the employee, and send a copy of the certification and notice of the employee's separation to the NSF. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or other similar payments, it must certify to the agency responsible for making such payments that the debtor owes a debt, including the amount of the debt, and that the provisions of 5 CFR 550.1108 have been followed.

(c) When the NSF is the creditor agency and the employee has already separated from federal service and all payments due from the paying agency have been paid, the Chief Financial Officer may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(d) When the NSF is the paying agency, upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that NSF has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). NSF shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim. If the employee transfers to another agency after the creditor agency has submitted its debt claim to NSF and before the debt is collected completely, NSF must certify the amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 607.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chief Financial Officer's notice of intention to offset as provided in § 607.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payment in accordance with 31 U.S.C. 3716.

§ 607.9 Refunds.

(a) NSF will promptly refund to an employee any amounts deducted to satisfy debts owed to NSF when the debt is waived, found not owed to NSF, or when directed by an administrative or judicial order.

(b) Another creditor agency will promptly return to NSF any amounts deducted by NSF to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when

directed by an administrative or judicial order.

(c) Unless required by law, refunds under this paragraph shall not bear interest.

§ 607.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after NSF's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 607.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of law.

§ 607.12 Interest, penalties, and administrative costs.

Charges may be assessed on a debt for interest, penalties, and administrative costs in accordance with 31 U.S.C. 3717 and the Federal Claims Collection Standards, 4 CFR 101.1 et seq.

[FR Doc. 93–21435 Filed 9–1–93; 8:45 am]
BILLING CODE 7555–01–M

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45 CFR Part 608

Claims Collection; Administrative Offset

AGENCY: National Science Foundation.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation implements the claims and debt collection procedures of 31 U.S.C. 3711, 3716, 3718 and 3720A. Subject to various limitations and due process requirements, these sections authorize agencies to seek collection of claims, to report claims to consumer reporting agencies, to compromise claims, to administratively offset claims, and to offset claims against tax refunds.

DATES: Comments must be submitted no later than October 4, 1993.

ADDRESSES: Send written comments to Jesse E. Lasken, Assistant General Counsel, National Science Foundation, 1800 G Street NW., room 501, Washington, DC 20550. Comments will be available for inspection at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jesse E. Lasken at 202–357–9435 or by writing to the address above.

SUPPLEMENTARY INFORMATION: These proposed regulations and a related proposed regulation implementing the salary offset provisions at 5 U.S.C. 5514 (to be issued as 45 CFR Part 607) are intended to provide a regulatory framework under which NSF can effectively utilize the authorities of 31 U.S.C. 3711, 3716, 3718 and 3720A and participate in various interagency cooperative programs designed to improve the ability of Federal agencies to collect debts owing to them with due regard to appropriate procedural safeguards. 31 U.S.C. 3711 and 3716 require agencies to issue regulations. The Department of the Treasury also requires agencies to issue a regulation in order to utilize the Federal Tax Refund Offset Program established pursuant to 31 U.S.C. 3720A. By this regulation and delegations under related statutes not covered by this regulation, the implementation of NSF's debt collection program and the exercise of the authority granted by the statutes will be delegated by the Director of NSF to its Chief Financial Officer.

Paperwork Reduction Act

This regulation does not include provisions for information collection that require review and approval by the Office of Management and Budget Under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and 5 CFR part 1320.

Regulatory Flexibility Act

The Director of NSF certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. NSF data indicates that a very small debt is owed to NSF. Hence, this regulation will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 and no regulatory impact analysis is required.

List of Subjects in 45 CFR Part 608

Administrative offset, Administrative practice and procedures, Claim collection, Debt collection, and Tax refund offset.

Authority: 31 U.S.C. 3711, 3716, 3718 and 3720A.

Dated: August 30, 1993.

Lawrence Rudolph,

Acting General Counsel.

For the reasons set out in the preamble, part 608 of title 45 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 608—CLAIMS COLLECTION AND ADMINISTRATIVE OFFSET

Sec.

608.1 Purpose and scope.
608.2 Collection, Compromise, and use of Consumer Reporting Agencies.
608.3 Administrative Offset.
608.4 Reductions of Tax Refunds.

Authority: 31 U.S.C. §§ 3711, 3716, 3718 and 3720A.

PART 608—CLAIMS COLLECTION AND ADMINISTRATIVE OFFSET

§ 608.1 Purpose and Scope.

(a) This part sets forth policies and procedures for the collection and compromise claims and the administrative offset of claims by the National Science Foundation (NSF) pursuant to 31 U.S.C. 3711, 3716, 3718 and 3720A. It is not intended to limit or govern the rights of the NSF or the United States to collect, compromise, or administratively offset debts or claims under other authority and procedures that may be legally available to it.

(b) Matters not addressed in this regulation should be reviewed and handled in accordance with applicable statutory provisions and the Federal Claims Collection Standards issued jointly by the Attorney General and the Comptroller General (4 CFR Parts 101–105).

(c) Any action other than the issuance of regulations specifically required to be done by the head of the agency by any of the statutes or regulations referred to in subsections (a) and (b) of this section shall be done on behalf of NSF by its Chief Financial Officer or by those to whom the Chief Financial Officer delegates authority. This is not intended to prevent the Chief Financial Officer from issuing additional internal procedures and guidance consistent with this regulation.

§ 608.2. Collection, Compromise, and use of Consumer Reporting Agencies.

(a) Subject to the specific limitations and procedures of 31 U.S.C. 3711 and in accordance with the applicable provisions of the Federal Claims Collection Standards, NSF, acting through its Chief Financial Officer or those to whom he or she delegates authority or assigns responsibilities, shall try to collect claims of the United States Government for money or

property arising out of the activities of NSF or that are referred to NSF and may compromise or suspend or end collection action of certain claims. In making demands for payment, NSF will follow the guidance set forth at 4 CFR 102.2. In appropriate cases, as authorized by and subject to 31 U.S.C. 3718 and 4 CFR 102.6, NSF may contract for collection services. Before compromising or suspending or ending the collection of a claim in excess of $5,000, the matter shall be referred to the NSF Office of General Counsel for legal review.

(b) When trying to collect a claim of the Government (except for claims under the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq.), NSF may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if (i) a notice published pursuant to 5 U.S.C. 552a(3)(4) indicates that information in the system of records may be disclosed to a consumer reporting agency that an individual is responsible for a claim and (ii) if the Chief Financial Officer of NSF decides that the claim is valid and overdue. Such disclosures to a consumer reporting agency will be done only under the conditions and procedures specified in 31 U.S.C. 3711(f) and in the Federal Claims Collections Standards. Specifically, before NSF provides the information to the consumer reporting agency, the individual will be given the notice required by 31 U.S.C. 3711(f)(1)(C); and in accordance with 4 CFR 102.5(c), the right of administrative review to be provided to the individual shall be consistent with the provisions of 4 CFR 102.3(c). If NSF does not have a current address for theindividual in its files, it will take reasonable action to locate the individual, but if unsuccessful will mail the notice to the individual's last known address. NSF will disclose information only to a consumer reporting agency that gives satisfactory assurances that it is complying with all laws of the United States relating to providing consumer credit information. The information provided by NSF shall be limited to the type of information described in 31 U.S.C. 3711(f)(1)(F). Moreover, NSF will not provide such information until it has established internal procedures to disclose promptly to a consumer reporting agency to which disclosure is made of any substantial changes in the condition or amount of the claim and to verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed.

(c) If in response to the notice referred to in (b) of this section, the individual repays or agrees in writing with NSF to a repayment plan, the information will not be disclosed to a consumer reporting agency. If in response to the notice referred to in (b) of this section the individual requests a review or reconsideration of the claim, information shall not be disclosed to the consumer reporting agency until such a review is provided.

(d) The review referred to in (c) of this section shall be based only on the written documentation in the file, including any additional written information provided by the individual in response to the notice referred to in (b) of this section. A written summary briefly describing the nature of the review performed and the conclusion reached shall be made. The written summary and conclusion shall be referred to the NSF Office of General Counsel for legal review. After legal review, a copy of the written summary shall be sent to the individual.

§ 608.3 Administrative Offset.

(a) If NSF is unable to collect a claim from a person after trying to do so in accordance with § 608.2, NSF may collect the claim by administrative offset subject to the procedures and limitations of 31 U.S.C. 3716 and the applicable provisions of the Federal Claims Collection Standards. Determinations to pursue administrative offset shall be made on a case-by-case basis taking into account the considerations specified at 31 U.S.C. 3716(b) and 4 CFR 102.3(a). Before employing administrative offset, NSF will comply with the notice, hearing, review, or other procedural requirements of 31 U.S.C. 3716(a) and 4 CFR 102.3 (b) and (c). Furthermore, before an administrative offset is taken by NSF pursuant to the authority of this part 608, the matter shall be referred to the Office of General Counsel for legal review to ensure that the required procedures have been followed.

(b) When another agency requests NSF to administratively offset a claim owing to that agency, NSF will normally comply with such request if the requesting agency has provided the certification required by 4 CFR 102.3(f) and offset would not be contrary to law. Before imposing administrative offsets at the request of another agency under this part 608, the matter shall be referred to the NSF Office of General Counsel for legal review.

(c)(1) In appropriate cases, NSF may request another agency to administratively set off a claim owed to NSF. Before making the certification to the other agency required by 4 CFR 102.3(f), the matter shall be referred to the NSF Office of General Counsel for legal review.

(2) Unless otherwise prohibited by law, NSF may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund or any other Federal retirement fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by that agency. The requests for administrative offset will certify in writing that (i) the debtor owes the United States a debt and the amount of the debt; (ii) NSF has complied with applicable regulations and procedures; and (iii) NSF has followed the requirements of the Federal Claims Collection Standards as made applicable by this section. Once NSF decides to request offset from a Federal retirement fund, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund and to ensure that offset will be initiated prior to the expiration of the statute of limitations.

(3) If NSF collects part or all of the debt by other means before deductions are made or completed pursuant to this subsection (c) of this section, NSF shall act promptly to modify or terminate its request for offset.

(4) This subsection does not require or authorize the fund servicing agency to review the merits of (i) NSF's determination with respect to the amount and validity of the debt, (ii) NSF's determination as to waiver under an applicable statute, or (iii) NSF's determination to provide or not provide an oral hearing.

(d) No collection by administrative offset shall be made on any debt that has been outstanding for more than ten years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this section will not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by

statutes other than 31 U.S.C. 3716, including debts subject to the Salary offset procedures at 45 CFR part 607;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

§ 608.4 Reductions of Tax Refunds.

(a) In accordance with regulations and guidance issued by the Secretary of the Treasury at 26 CFR 301.6402 et seq. and the requirements of 31 U.S.C. 3720A, NSF will participate in the Federal Tax Refund Offset Program for offset against income tax refunds of persons owing past due legally enforceable debts to NSF.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

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

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

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by NSF against amounts payable to or on behalf of the debtor by or on behalf of NSF;

(4) With respect to which NSF has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(5) With respect to which NSF has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered the evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(6) Has been disclosed by NSF to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Internal Revenue Service regulations at 26 CFR 301.6402–6 et seq. relating to the eligibility of a debt for tax return offset have been satisfied.

(c) NSF will make a request for reduction of an IRS tax refund only after the NSF determines that an amount is owed and past-due and provides the debtor with 60 days written notice. NSF's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of the NSF's Notice of Intent, NSF intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) That the debtor has a right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(4) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

(d) A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include with the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(e) The failure of a debtor to respond as provided in subsection (d) of this section will result in an automatic referral of the debt to the IRS without further action by NSF. If the debtor responds, NSF will consider all available evidence related to the debt and issue a written determination, including supporting rationale, whether its prior determination that the debt it past-due and legally enforceable is sustained, amended, or canceled. Before this determination is made the matter shall be referred to the NSF Office of General Counsel for legal review. NSF will give prompt notification of this determination to the debtor.

[FR Doc. 93–21436 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

ACTION

45 CFR Parts 1207 and 1208

Senior Companion/Foster Grandparent Income Eligibility

AGENCY: ACTION.

ACTION: Proposed rule.

SUMMARY: ACTION is proposing to revise the process for determining income eligibility for Foster Grandparent and Senior Companion volunteers. The proposed rule will revise the Foster Grandparent Program's (FGP) and the Senior Companion Program's (SCP) income eligibility guidelines so as to make them more inclusive. This action will make the Programs more responsive to local economic conditions, to the special economic conditions affecting the elderly, and to the particular needs of individuals at 100 percent of poverty or below. The effect of this rule change will be to meet more fully the Programs' goals of targeting low-income seniors and taking into account circumstances appropriate to local situations.

DATES: Comments must be received no later than October 18, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Thomas E. Endres, Acting Assistant Director, Older American Volunteer Programs, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Thomas E. Endres, 202–606–4855.

SUPPLEMENTARY INFORMATION:

I. Background

These ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113, 87 Stat. 194.

ACTION regulations governing Senior Companion income eligibility, 45 CFR 1207.3–5 (a)(3) and (4), Foster Grandparent income eligibility, 45 CFR 1208.3–5 (a)(3) and (4) provide:

(3) To be enrolled, a Foster Grandparent/Senior Companion cannot have an annual income from all sources exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is the higher amount of either: (i) 125% of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964 as amended by Pub. L. 92–424 [42 U.S.C. 2971d), or (ii) 100% of the poverty line plus the amount the state supplements the Federal Supplemental Security Income (SSI). In cases where a Foster Grandparent/Senior Companion is a member of a household in

which other persons share common expenses, his or her income eligibility is determined by the combined income of members of the household.

(4) Once enrolled, a Foster Grandparent/Senior Companion shall remain eligible to serve and to receive a stipend as long as his or her income does not exceed the prescribed ACTION income guideline by 20%. Income eligibility shall be reviewed annually by the sponsor.

II. Problems Under the Current Rule

Under the current rule, those states which provide SSI supplementations in excess of 125 percent of Health and Human Services (HHS) Poverty Income Guidelines receive special consideration. This assures eligibility for potential participants living in states with generous SSI supplements. It does not, however, account for cost of living differences between states.

Further, the current rule does not take into account cost of living differences within states.

The current rule results in a large differential in income eligibility in a few states. Based on ACTION's current guidelines, for a household of four:

Initial eligibility to enroll ranges from 125 to 160 percent of poverty.

During the second and following years of service, volunteers are allowed to have incomes up to 20 percent above the applicable income guideline. For those volunteers, eligibility ranges from 145 to 180 percent of poverty.

Five states—Alaska, California, Colorado, Connecticut, and Massachusetts have income eligibility guidelines greater than 125 percent of poverty, because of their level of SSI supplementation. However, there is no correlation between these states and poverty or cost-of-living data.

The current rule excludes from the Programs some seniors who may meet the low-income eligibility requirement. Examples are:

Seniors who live with roommates to afford living expenses may not be eligible when their roommates' income is counted.

Seniors who support adult children and do not have access to the children's income may not be eligible when the children's income is counted.

Seniors who have high out-of-pocket medical expenses may not be eligible even when their income, after medical costs, may be no more than that of a volunteer whose medical expenses are fully covered by Medicaid.

The Domestic Volunteer Service Act requires that individuals whose income is not more than 100 percent of the poverty level be given special consideration for program participation. However, the current rule does not provide for any special consideration of individuals whose income is at or below 100 percent of the poverty level.

III. Proposed Resolution of Problems Under Current Regulations

There are three areas which the proposed rule seeks to amend, so as to ameliorate the problems addressed in section II. These relate to the definition of "household," inclusion of an allowable medical expense deduction, and an alternative to the current approach for accounting for cost of living differentials.

For each of these areas, various approaches were considered, as appropriate to each particular concern. Accordingly, in Paragraph A, a variety of alternatives are considered in the context of their respective strengths and weaknesses; in Paragraph B, strengths and weaknesses are considered in the context of a single option, and in Paragraph C, different alternatives are presented. A summary of these considerations is set forth below.

A. Alternatives to the current rule's definition of "household":

1. Count only the senior's income.

Strengths

- Excludes the income of related and unrelated people who live with the senior but do not contribute to the senior's support.

Weaknesses

- Excludes the income of a spouse who lives with the senior.
- Excludes the income of other relatives who live with and provide support for the senior.

2. Count the senior and the spouse's income when the spouse lives with the senior.

Strengths

- Excludes the income of related and unrelated people who live with the senior but do not contribute to the senior's support.
- Includes the income of a spouse who lives with the senior.

Weaknesses

- Excludes the income of relatives who live with and provide support for the senior.

3. Count the income of all related people who live with and provide support for the senior.

Strengths

- Excludes the income of related and unrelated people who live with the senior but do not contribute to the senior's support.
- Includes the income of a spouse and all other related people who live with and provide support for the senior.

Weaknesses

- Counts the total income of relatives who provide support regardless of the amount of the support.
- Regulations would need to define both "family" and "support," and would be complex and subject to interpretation.
- Administration would be difficult for projects.

4. Count the senior's and the spouse's income when the spouse lives with the senior. Count the money and the value of in-kind support relatives provide to the senior or spouse as income.

Strengths

- Includes the spouse's income with the spouse lives with the senior.
- Excludes the income of other related and unrelated people who live with the senior.
- Counts the actual benefits provided to the senior by relatives as income.

Weaknesses

- Regulations would be complex and subject to interpretation. Regulations would need to define "in-kind support" and place a value on that support.
- Administration would be difficult for projects.

5. Count the senior's and the spouse's income. Permit project directors to define and count the value of in-kind support relatives provide to the senior or to the spouse as income.

Strengths

- Includes the spouse's income when the spouse lives with the senior.
- Excludes the income of other related and unrelated people who live with the senior.
- Permits project directors the discretion to count the actual benefits provided to the senior by relatives as income, when appropriate.

Weaknesses

- Permits variation in the way income is determined between projects when in-kind income is counted.

B. Inclusion of a medical expense deduction up to a specified cap:

Strengths

- Permits projects to enroll volunteers who would meet the income guidelines if out-of-pocket medical expenses were deducted from income.
- Capping the deduction maintains the Programs' low-income focus.
- Permits implementation of the deduction in such a way as to minimize the administrative burden on projects.

Weaknesses

• Increases the pool of eligible seniors without a corresponding increase in available volunteer slots.

C. Alternatives to the current approach to accounting for cost of living differences:

1. VISTA Subsistence Rates Alternatives

VISTA provides different subsistence rates across the country to take account of cost of living differences. These are based on a matrix of various economic indicators. The alternatives considered in using these different rates in determining alternatives for FGP/SCP were:

a. 10 percent cost-of-living differential in those counties with the highest subsistence rate under the VISTA program.

b. 10 percent cost-of-living differential in those counties with the two highest subsistence rates under the VISTA program.

c. Poverty ceiling for FGP/SCP counties based directly on VISTA subsistence payments by location:

VISTA	FGP/SCP
95%	115%
100%	105%
110%	130%
115%	135%

2. Department of Labor Lower Level Standard Income Levels

Alternatives

The Department of Labor publishes different lower level standard income levels (LLSIL) by region (metropolitan and nonmetropolitan), as well as for 25 metropolitan statistical areas, to function as eligibility data for participation under the Job Training Partnership Act.

LLSIL data were used to examine the following alternative income eligibility guidelines for FGP/SCP:

a. 10 percent cost-of-living differential if 70 percent of LLSIL exceeds 125 percent of poverty.

b. Greater of 125 percent of poverty or 70 percent of LLSIL.

c. Eligibility is 80 percent of LLSIL.

3. Housing and Urban Development Alternatives

HUD publishes income data for 341 metropolitan areas and for 2,415 non-metropolitan counties based on the prior decennial Census updated annually. HUD's very low-income guidelines were used to examine the following alternatives for FGP/SCP:

a. 10 percent cost-of-living differential if HUD limit exceeds 150 percent of poverty.

b. 10 percent cost-of-living differential if HUD limit exceed 125 percent of poverty.

c. The greater of 125 percent of poverty or HUD limit.

IV. Participation in Proposed Rule Making

The Director of ACTION appointed an Older American Volunteer Program Income Eligibility Task Force to examine the income eligibility criteria for volunteer participation in the Foster Grandparent and Senior Companion Programs. As regards the issue of participation in rule making, the Task Force membership was composed of representatives from ACTION Headquarters and field offices as well as FGP and SCP project directors. The Task Force surveyed all ACTION Regional and State Office program directors as well as all Foster Grandparent and Senior Companion project directors.

V. Anticipated Impact of the Proposed Rule

The Foster Grandparent and Senior Companion Programs will continue to target low-income seniors. By eliminating the household definition and instituting a medical expense deduction, the proposed rule will emphasize the Programs' low-income focus as it will provide opportunities to low-income seniors who may have been excluded from the Programs including:

Low-income seniors who live with, but receive no support from, relatives.

Low-income seniors who live with roommates to save money.

Seniors who live on low-incomes after paying out-of-pocket medical expenses.

The proposed adjustment to the annual income guidelines will:

Maintain the Programs' focus on low-income seniors.

End the inequity whereby a few States, as a result of their SSI supplementations, are able to increase the eligible volunteer pool and thereby fail to target low-income seniors.

Provide a more equitable system that, to the extent possible, accounts for real differences in costs of living within and between states, as required.

Provide a system that is simple and easy to administer. FGP/SCP would obtain the most current VISTA subsistence rates and apply them routinely.

The changes will not increase the burden on project administration.

VI. List of Subjects in 45 CFR Parts 1207 and 1208

Aged, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

VII. Proposed Rule—Senior Companion Program

For the reasons set forth in the preamble, 45 CFR part 1207 is proposed to be amended as follows.

PART 1207—SENIOR COMPANION PROGRAM

1. The authority citation for part 1207 continues to read as follows:

Authority: Sec. 211(d), (e); 212, 213, 221, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, sec. 213 of Pub. L. 97–35, 97 Stat. 487, 42 U.S.C. 5011(b), (d) and (e); 5012, 5022, 5023, 5042(14), 5060 and 5013.

2. Section 1207.1–2 is amended by removing the definition of *Household* and by adding the following definitions in alphabetical order:

§ 1207.1–2 Definitions.

* * * * *

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, shall not exceed 15 percent of the applicable ACTION income guideline. *Annual income* is counted for the past 12 months and includes: The applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Project directors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

* * * * *

3. Section 1207.3–1 is amended by adding a paragraph (v) reading as follows:

§ 1207.3–1 Sponsor responsibility.

* * * * *

(v) Assure that individuals whose income is at or below 100 percentum of the poverty level receive special consideration for participation in the Program.

4. Section 1207.3–5 is amended by revising paragraphs (a)(3), (a)(4), and (c)(5) to read as follows:

§ 1207.3–5 Senior companions.

(a) * * *

(3) To be enrolled, a Senior Companion cannot have an annual income from all sources, after deducting allowable medical expenses, exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is 125

percent of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92–424 (42 U.S.C. 2971(d)), except (i) in those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and nonmetropolitan counties identified by the Director as being higher in cost of living, as determined by application of the VISTA subsistence rates, whereby the guideline shall be 10 percent above that amount; and (ii) in Alaska, whereby the guideline may be waived by the ACTION State Director for individual locations if a project demonstrates that low-income individuals, in that location, are participating in the project. No Senior Companion currently participating in the Program, shall become ineligible as a result of this change in guidelines.

(4) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend as long as his or her annual income, after deducting allowable medical expenses, does not exceed the prescribed ACTION income eligibility guideline by 20 percent. Income eligibility shall be reviewed annually by the sponsor.

* * * * *

(c) * * *

(5) *Stipends.* A Senior Companion will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When both the eligible husband and wife serve as a Foster Grandparent or Senior Companion, only one spouse shall be entitled to receive a stipend. Both spouses in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparents or Senior Companions marry, may each continue to receive a stipend.

* * * * *

VIII. Proposed Rule—Foster Grandparent Program

PART 1208—FOSTER GRANDPARENT PROGRAM

5. The authority citation for part 1208 continues to read as follows:

Authority: Secs. 211(a), 212, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, 42 U.S.C. 5011 (a) and (f), 5012, 5021, 5022, 5023, 5042(14), and 5060.

6. Section 1208.1–2 is amended by removing the definition of *Household* and by adding the following definitions in alphabetical order:

§ 1208.1–2 Definitions.

* * * * *

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or other third party and, shall not exceed 15 percent of the applicable ACTION income guideline.

Annual income is counted for the past 12 months and includes: The applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Project directors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

* * * * *

7. Section 1208.3–1 is amended by adding a paragraph (v) reading as follows:

§ 1208.3–1 Sponsor responsibility.

* * * * *

(v) Assure that individuals whose income is at or below 100 percentum of the poverty level receive special consideration for participation in the program.

8. Section 1208.3–5 is amended by revising paragraphs (a)(3), (a)(4), and (c)(5) to read as follows:

§ 1208.3–5 Foster grandparents.

(a) * * *

(3) To be enrolled, a Foster Grandparent cannot have an annual income from all sources, after deducting allowable medical expenses, exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is 125 percent of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92–424 (42 U.S.C. 2971(d)), except: (i) In those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and nonmetropolitan counties identified by the Director as being higher in cost of living, as determined by application of the VISTA subsistence rates, whereby the guideline shall be 10 percent above that amount; and (ii) in Alaska, whereby the guideline may be waived by the ACTION State Director for individual location if a project demonstrates that low-income individuals in that location are participating in the project. No Foster Grandparent currently participating in the Program, shall become ineligible as a result of this change in guidelines.

(4) Once enrolled, a Foster Grandparent shall remain eligible to serve and to receive a stipend as long as his or her annual income, after deducting allowable medical expenses, does not exceed the prescribed ACTION income eligibility guideline by 20 percent. Income eligibility shall be reviewed annually by the sponsor.

* * * * *

(c) * * *

(5) *Stipends.* A Foster Grandparent will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When both the eligible husband and wife serve as a Foster Grandparent or Senior Companion, only one spouse shall be entitled to receive a stipend. Both spouses in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparents or Senior Companions marry, may each continue to receive a stipend.

* * * * *

Dated: August 27, 1993.

G. Gary Kowalczyk,

Acting Director.

[FR Doc. 93–21374 Filed 9–1–93; 8:45 am]

BILLING CODE 6050–28–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–239; RM–8313]

Radio Broadcasting Services; Quincy, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Quincy Community Radio proposing the allotment of Channel 240C3 at Quincy, Washington, as its second local FM transmission service. Channel 240C3 can be allotted to Quincy with a site restriction of 3.5 kilometers (2.2 miles) northeast. The coordinates for Channel 240C3 at Quincy are North Latitude 47–15–13 and West Longitude 119–48–58. Since Quincy is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

DATES: Comments must be filed on or before October 18, 1993, and reply comments on or before November 2, 1993.

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 F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street NW., suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–239, adopted August 13, 1993, and released August 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

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,

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

[FR Doc. 93–21314 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 930828–3228; I.D. #080593A]

RIN 0648–AC99

Atlantic Sea Scallop Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the conservation and management measures proposed in Amendment 4 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This proposed rule includes: A moratorium on most new entrants into the scallop fishery; allocations of days-at-sea (DAS) that vessels may fish for scallops based on three vessel groups (Full-time, Part-time, and Occasional); a requirement to purchase and install Vessel Tracking Systems (VTS) for Full-time and Part-time vessels and a call-in system for Occasional vessels to monitor DAS; permits for vessel operators and dealers; an open access scallop permit for vessels landing up to 400 pounds (181.44 kg) of shucked scallops or up to 50 U.S. bushels (17.62 hl) of in-shell scallops per trip; limitations on upgrading of vessel size and engine horsepower; a prohibition on acquiring more than a 5 percent ownership interest in the total number of limited access scallop vessels; mandatory reporting for permitted vessels and dealers; crew-size limits; maximum dredge and trawl sweep size restrictions; minimum ring and mesh size restrictions; framework measures to adjust the effort control and other measures; a minimum shell height restriction; and an annual option for vessels in the Part-time or Occasional category to fish in the next higher vessel group if they use one dredge not to exceed 10.5 feet (3.2 m) and a crew not to exceed five. This proposed amendment also includes a definition of overfishing for Atlantic sea scallops and a determination that the sea scallop resource is overfished. The intent of this amendment is to reduce the fishing mortality rate and rebuild the stock of Atlantic sea scallops.

DATES: Comments on the proposed rule must be received on or before October 14, 1993. If Amendment 4 is approved, NMFS will publish a list of certified vendors of VTS. To be included in the first list expected to be published, information from vendors supporting their request for VTS certification must be received September 29, 1993.

ADDRESSES: Comments on the proposed rule, Amendment 4, or its supporting documents should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Sea Scallop Plan."

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director (**ADDRESS LISTED ABOVE**) and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

Copies of Amendment 4, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097.

Information from sources interested in certifying fishing vessel tracking systems should be sent to Richard Roe, Northeast Regional Director (**ADDRESS LISTED ABOVE**). Mark the outside of the envelope "Certification of VTS."

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Sea Scallop Fishery Management Plan (FMP) was implemented by emergency regulations effective May 15, 1982 (47 FR 20776). On August 13, 1982, final regulations to implement the FMP were issued (47 FR 35990).

Conservation and management of the sea scallop resource under the FMP has relied on a single measure, a meat count/shell height standard. The standard has varied between 40 meats per pound (MPP) with a corresponding shell height of 3¼ inch (83 mm) in 1982, to the current 30 MPP (3½ inches (89 mm)). Amendment 2 to the FMP (53 FR 23634) adjusted the meat count standard to allow a spawning tolerance of 10 percent from October through January, and Amendment 3 (55 FR 433) required that sea scallops be offloaded during a designated 12-hour period.

On March 2, 1989 (54 FR 16123), the Council established a control date to inform prospective entrants into the sea scallop fishery that after this date future access to the fishery would not be assured, should a management program be implemented that limited the number of participants.

Proposed Amendment 4 was prepared by the Council in consultation with the Mid-Altantic and South Atlantic Fishery Management Councils. A notice of a draft supplemental environmental

impact statement (DSEIS) was published on December 24, 1992 (57 FR 61422). The public comment period for the DSEIS ended on February 23, 1993. At the May 13, 1993, New England Fishery Management Council meeting, the Council voted to approve Amendment 4 for submission to the Secretary of Commerce. A notice of availability for the proposed amendment was published in the **Federal Register** on August 10, 1993 (58 FR 42522).

Overfishing Definition

Amendment 4 proposes the following definition of overfishing for the Atlantic sea scallop resource: Overfishing for the Atlantic sea scallop resource is defined as a fishing mortality rate that, if continued, results in a spawning stock biomass of five percent or less of the maximum spawning potential (MSP). The fishing mortality rate (F) corresponding to 5 percent MSP is currently estimated at 0.97. The most recent assessment estimates that the current (F) is between 1.5 and 1.8. Recruitment in recent years has been unusually high. Unless this trend continues, scallop stocks will decline rapidly at the current F.

To reduce fishing mortality below the overfishing definition threshold, the Council proposes to reduce fishing effort by approximately 40 percent over 7 years. Because the impact of effort controls and gear restrictions on the resource is uncertain, the Council estimates that actual effort reduction needed could be as low as 35 percent or as high as 70 percent.

The MSP threshold may be adjusted as additional biological information becomes available. To make changes to the MSP level, the updated targets will be reviewed by the Scallop Plan Development Team and approved by the Scallop Committee and Council.

Proposed Management Measures

Amendment 4 proposes to replace a management system containing biological controls (minimum size of sea scallops through average meat counts and minimum shell height), only, with a more comprehensive combination of management measures, including both effort control (including extensive permitting and reporting requirements) and biological control (minimum shell height).

Meat-count management was rejected because incoming year classes were subject to increased mortality as they became vulnerable to the gear, and vessels had difficulty staying within the legal meat count and making a viable trip at the same time. Compounding the problem was an increase in the total number of vessels fishing for scallops, which contributed to increased fishing effort resulting in increased fishing mortality.

Amendment 4 proposes that fishing mortality (i.e., fishing effort) be controlled by placing limits on the number of days that vessels can spend at sea fishing for scallops. Thus, the number of vessels that will be allocated DAS must also be controlled to ensure that the DAS limits are not exceeded. These DAS will be allocated to three vessel groups based on a vessel's directed fishing effort during 1985–1990 (Full-time, Part-time, and Occasional). Fishing effort will be reduced from current levels over 7 years until the fishing mortality rate falls below the overfishing definition.

Amendment 4 would establish two basic permit categories, limited access and general. Limited access permits allow a vessel to possess more than 400 pounds (181.44 kg) of shucked sea scallops (50 bushels (17.62 hl) of in-shell scallops) subject to DAS allocations. Vessels that would qualify for a limited access permit are:

(1) Vessels that had a Federal scallop permit during 1988 or 1989, and landed more than 400 pounds (181.44 kg) of scallops on at least one trip during that period;

(2) Vessels that were being constructed and/or re-rigged for the scallop fishery by March 2, 1989, and had a Federal scallop permit and landed scallops on or before March 2, 1990; and

(3) Vessels that changed ownership between March 2, 1989, and November 28, 1990, had a Federal scallop permit and landed scallops between 1982 to 1988, and had a Federal scallop permit and landed over 400 pounds (181.44 kg) of scallops on any one trip in 1990.

To take advantage of the eligibility criteria, the vessel owner must apply for a limited access scallop permit before the expiration of 12 months from the date of publication of the final rule in the **Federal Register**. Vessel owners who are denied a limited access permit would have the right to appeal and the opportunity for a hearing. The proposed regulations also include provisions allowing a vessel to fish in the scallop fishery, and specifying the vessel's level of participation during the appeal.

Limited access permits would transfer with the vessel and would not be otherwise transferable; however, the vessel must remain in the same fleet category (Full-time, Part-time, Occasional) or move to a lower category. Vessels that are upgraded, whether by refitting or replacement, would be limited to a single increase of 20 percent or less in horsepower, and 10 percent or less in the vessel's length, gross registered tonnage, and net tonnage. Once a vessel has been upgraded, and its horsepower increased, no additional increases in horsepower are permitted. Likewise, once its length, gross registered tonnage, or net tonnage has been increased, no additional increases in those quantities are permitted. A vessel with a limited access permit could be upgraded once, provided that the upgrade did not exceed the limitations listed above. No person or business entity could acquire an ownership interest in more than 5 percent of the number of vessels issued limited access scallop permits. However, a person with greater than 5 percent ownership interest of vessels issued limited access scallop permits at the time of initial application into the limited access fishery, may continue to maintain ownership of such vessels, but may not acquire additional vessels.

If the owner of a vessel with a limited access permit fails to renew the vessel's permit in any year, the vessel would not be eligible to obtain a limited access permit in subsequent years. Additionally, if a vessel owner voluntarily relinquishes a vessel's Federal limited access scallop permit, that permit cannot be renewed or re-issued.

If fishing mortality declines faster than anticipated and stock conditions improve, the Council will have authority, through framework measures included in the amendment, to recommend to the Regional Director actions to relax the moratorium rules and allow new entrants instead of allowing more DAS to participants.

Vessels that do not qualify for a limited access permit would be allowed to obtain a general scallop permit and to land up to 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops per trip. No more than one trip could be landed within a calendar day. Possession of up to 40 pounds (18.14 kg) of scallops for personal consumption would not require a Federal scallop permit. Sale of any amount of scallops without a Federal scallop permit would be prohibited.

Transfer-at-sea of scallops would be prohibited. Transfer-at-sea of all fish would be prohibited for Federal scallop permit holders. This prohibition may impact on other fisheries, such as the Atlantic bluefin tuna fishery, and comment is invited.

To monitor DAS, all Full-time and Part-time vessels would be required to purchase and use on board the vessel a VTS unit. Occasional vessels would be required to use a call-in system. Part-

time vessels would be required to purchase a VTS unit because it would insure a high level of compliance with DAS restrictions.

In additional to DAS restrictions, the amendment proposes certain crew and gear restrictions. For limited access vessels, crew size would be limited to nine, including the captain, unless the vessel elected to fish under the smaller dredge category. Scallop dredge vessels would be limited to a combined maximum dredge width of 31 feet (9.4 m). The Council informed the Regional Director that its intent was to allow the current industry standards for both small (10.5-foot (3.2 m)) and large (two 15-foot (4.6 m)) dredges to continue and that the measurement procedure for compliance monitoring should be consistent. Subsequent research has shown that the 15-foot (4.6 m) dredge currently in use by the industry is an inside dredge measurement, whereas the 10.5-foot (3.2 m) dredge currently in use by the small vessel fleet is an outside measurement. To comply with the Council's intent, the regulations specify outside measurements for both small and large dredges (31 feet (9.4 m) and 10.5 feet (3.2 m)).

Scallop dredge rings would be restricted to a minimum size of 3¼ inch (83 mm) in years one and two and 3½ inch (89 mm) in year three and beyond. Chafing gear, cookies, or other obstructing devices would be prohibited from dredge tops. No more than double links would be allowed between rings, and the top twine of the dredge would be restricted to 5½ inches (13.97 cm) or greater. Scallop trawl vessels would be limited to a maximum sweep of 144 feet (43.9 m), and nets must be 5½ inch (13.97 cm) mesh or greater (5 inches (12.7 cm) south of the Hudson Canyon line until year three, then 5½ inches (13.97 cm) thereafter). Vessels electing to fish under the small dredge category would be limited to one dredge no wider than 10.5 feet (3.2 m) and no more than a five person crew. Limited access scallop vessels fishing under the DAS program would be prohibited from having shucking machines and those that shuck at sea would be prohibited from having sorting machines.

Permits would be required for the operator of any vessel issued a limited access or general category permit or in possession of more than 40 pounds (18.14 kg) of Atlantic sea scallops. Permits would be required for dealers who purchase Atlantic sea scallops. A Dealer is defined as any person who receives scallops for a commercial purpose from the owner or operator of a vessel other than only for transport on land.

To keep track of the days at sea and the commercial catch, dealers and vessel operators would be required to submit reports. Dealers would have to submit these reports on a weekly and annual basis. Owners and operators of vessels with scallop permits would have to submit their daily fishing logs on a monthly basis.

The amendment also includes the following provisions to address the traditional small boat fleets: Vessels that have qualified for a limited access permit and are in either the Part-time or Occasional category, at the beginning of each year, may elect to fish in the next higher vessel category if they accept the limits of the small dredge category, that is, they use, throughout the year, one dredge not to exceed 10.5 feet (3.2 m) and a maximum crew of 5.

To gather more specific data on the scallop resource, permitted vessels would be required to take an observer if requested by the Regional Director. The observer requirement could be waived by the Regional Director if the vessel is unsafe or not equipped to carry an observer on board. The cost of an observer's accommodations and food would be borne by the vessel owner. Also, all permitted dealers would be required to allow NMFS authorized agents to sample sea scallops.

Although not specifically included in the amendment, these regulations would allow vessels with limited access permits to carry-over a maximum of 10 days from one year to the next. The Regional Director determined that this provision was necessary to prevent vessel owners from feeling obligated to fish at the end of each year despite unfavorable weather conditions. The Council endorsed this change at its August 10–11, 1993 meeting.

If Amendment 4 is approved, dates of implementation of various administrative management measures in the amendment may have to be staggered to some extent to minimize any adverse financial impacts on fisherman by providing a reasonable amount of time to become familiar with various requirements and comply with permit requirements, VTS requirements and reporting requirements.

Framework Measures

Amendment 4 includes framework measures to implement adjustments to the effort control and other measures in the amendment as needed in order to meet the Amendment's objectives. Annually, upon request by the Council, but at a minimum in 1996 and 1999, the Regional Director would be required to provide the Council with information on the status of the sea scallop resource. Within 60 days of receipt of that information, the Plan Development Team (PDT) would be required to determine if the existing measures are adequate to meet the reduced fishing mortality rate target levels. The PDT would be required to prepare findings and recommendations and report them to the Council. After receiving the PDT's findings and recommendations, the Council would determine whether adjustments or additions to the management measures are necessary to meet the goals and objectives of the FMP. The Council would then develop and analyze appropriate management measures over the span of at least two Council meetings. The Council would have to select management measures from the list specified in the proposed rule or as otherwise contained in the FMP. After developing the proposed management measures, the Council would be required to make a recommendation to the Regional Director. The recommendation would have to include supporting rationale and, if management measures are recommended, an analysis of the impacts and a recommendation whether to publish the management measures as a final rule.

To recommend that the management measures should be published as a final rule, the Council would have to consider at least the following factors and provide supporting analysis for each factor considered: (1) Whether the timing of the availability of data on which the recommended management measures are based provides adequate time to publish a proposed rule and have the regulations in place for the entire fishing season; (2) whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures; (3) whether there is an immediate need to provide further protection for the scallop resource; and, (4) whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule. The consideration of these factors is necessary to help the Regional Director determine whether it is appropriate to allow critical management measure adjustments to be promulgated without a proposed rule in order to maximize the protection of the Atlantic sea scallop resource. The consideration of these factors is necessary to justify a conclusion that there is a good cause under the Administrative Procedures Act and the Magnuson Act to waive prior public

comment and cooling-off period requirements.

If the Council recommends additions or adjustments to management measures and if the Regional Director concurs with the Council's recommendations, including any recommendation to publish proposed management measures as a final rule, the action would be published as a final rule without further prior public comment. The Regional Director could choose the option of publishing the recommended management measures as a proposed rule, however, regardless of the Council's recommendation. If the Regional Director does not concur with the Council's recommendation, the Council will be notified in writing of the non-concurrence.

If the Council does not recommend any additions or adjustments to current management measures, no further action would be required.

Vessel Tracking System Specifications

This amendment proposes that vessel owners holding Part-time or Full-time sea scallop permits be required to purchase and install electronic tracking systems to enable a vessel's DAS to be monitored. Section 650.25(a)(2) of this proposed rule includes the technical specifications these systems would be required to meet in order to be approved by NMFS for purchase by vessel owners. Concurrent with this proposed rule, NMFS is asking vendors interested in having systems certified for use in this fishery to submit information to the Northeast Regional Director (SEE ADDRESSES) showing that the system meets each of the specifications included in § 650.25(a)(2). This information must be received no later than October 4, 1993. The Regional Director will then publish a list of certified systems in the **Federal Register.**

To provide interested members of the public with a clear understanding of what would be required if Amendment 4 is approved, and because this amendment would substantially amend every provision of the current requirements, proposed 50 CFR part 650 is published here in its entirety.

Some of the DAS allocation numbers in the narrative of the final SEIS were not revised in that document to reflect the corrected numbers, which appear in Table 44 of the final SEIS.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires the Secretary to publish implementing regulations proposed by a Council within 15 days of the receipt of a proposed amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a final supplemental environmental impact statement (FSEIS) for Amendment 4 describing the possible impacts on the environment as a result of this rule. A copy of the FSEIS may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft RIR that demonstrates positive net present value over a 15-year period compared to a continuation of the current program. Employment and net benefits to the fishery are lowest in year three of the rebuilding program (estimated decreases of 14 and 23 percent, respectively), and non-wage variable costs are expected to increase by 14 percent during the first year of implementation, the only year in which they do increase. These estimated short-term losses are offset by long-term gains with an estimated increase of $114.1 million in the present value of ex-vessel net benefits over the 15-year time period. Additionally, productivity is expected to increase; there should be no detrimental effect on competition, investment or innovation in the fishery. A copy of the RIR may be obtained from the Council (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (IRFA), which concludes that this proposed rule, if adopted, may have significant effects on a substantial number of small entities. There are approximately 400–600 vessels that rely on scallops for a portion of their revenue. All are considered small entities. Of these, more than 150 vessels would not qualify for the vessel moratorium and may have to redirect effort into other fisheries. Approximately 63 percent of the 150 vessels, however, depend on sea scallops for 15 percent or less of their total revenue and may be able to compensate by participating in the general scallop fishery (no moratorium, landings up to 400 pounds (181.44 kg)). For those vessels qualifying for the limited access fishery, there are significant short-term losses in revenue that are offset by long-term gains. A copy of the IRFA may be obtained from the Council (see **ADDRESSES**).

The proposed rule contains eight new collection-of-information requirements and revises four existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public's reporting burdens for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements are:

(1) Dealer permits, (5 minutes/response);

(2) Operator permits, (1 hour/response);

(3) Notice requirements for observer deployment, (2 minutes/response);

(4) Proof of installation of vessel tracking system, (2 minutes/response);

(5) Automated vessel tracking system, (0 minutes/response);

(6) Vessel call-in requirement, (2 minutes/response);

(7) Days-at-sea exemption program, (2 minutes/response);

(8) Vessel logbooks, being submitted under #0648–0212 (5 minutes/response).

Revisions to the existing requirements are:

(1) Limited access permits, OMB #0648–0202, will be issued to vessels with documented history of participation in the fishery—appeal of denied permits will require written submission (3 hours/response);

(2) Limited access permits, OMB #0648–0202, will specify allowed days-at-sea—appeal of the days-at-sea allocation will require written submission (5 hours/response);

(3) Dealer purchase reports that were previously voluntary, OMB #0648–0229, will be mandatory (2 minutes/response);

(4) Annual processed products reports that were previously voluntary, OMB #0648–0018, will be mandatory (2 minutes/response).

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Richard Roe, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**, above).

List of Subjects in 50 CFR part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: August 30, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is proposed to be revised to read as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

Sec.

650.1 Purpose and scope.
650.2 Definitions.
650.3 Relation to other laws.
650.4 Vessel permits.
650.5 Operator permits.
650.6 Dealer permits.
650.7 Recordkeeping and reporting requirements.
650.8 Vessel identification.
650.9 Prohibitions.
650.10 Facilitation of enforcement.
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Subpart B—Management Measures

650.20 Shell-height standard.
650.21 Gear and crew restrictions.
650.22 Possession restrictions.
650.23 Transfer-at-sea.
650.24 Days-at-sea (DAS) allocations..
650.25 Monitoring requirements.
650.26 DAS notification program.
650.27 DAS exemption program.
650.28 At-sea observer coverage.
650.29 Experimental fishing exemption.

Subpart C—Framework Adjustments to Management Measures

650.40 Framework specifications.

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

Subpart A—General Provisions

§ 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP), which was prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA).

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of such officer.

(2) Any special agent or fisheries enforcement officer of NMFS.

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

Chafing gear or cookies mean steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

COLREGS Demarcation Lines mean the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972, (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules.

Council means the New England Fishery Management Council.

Days-at-sea (DAS) means the 24-hour periods of time during which a fishing vessel is deemed to be absent from port for purposes of scallop fishing. DAS are calculated beginning when a vessel leaves port and ending when the vessel returns to port.

Dealer means any person who receives scallops for a commercial purpose from the owner or operator of a vessel, other than exclusively for transport on land.

Dredge or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design that can be used in the harvest of Atlantic sea scallops.

Dredge top means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching Atlantic sea scallops.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops and any amendments thereto.

Fishing, or to fish, means any activity that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation.

NMFS means the National Marine Fisheries Service, NOAA.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master, captain, or other individual in charge of a fishing vessel's operations.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Regional Director means the Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, or a designee.

Reporting month means a period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means a period of time beginning at 0001 local time on Sunday; and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for sea scallops.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the Council.

Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge furthest away from the hinge.

Shucking or *to shuck* means opening scallops and separating the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes scallops from their shell.

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Transfer means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel and move same to another vessel.

Trawl means gear consisting of a net that is towed and is capable of catching sea scallops. It includes Danis hand Scottish seine gear.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Trip is the period of time during which a fishing vessel is deemed to be absent from port for the purpose of fishing, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction means that the keel has been laid and that there is a written agreement to construct a fish vessel.

Vessel registered length means the registered length specified on the U.S. Coast Guard documentation or on the state registration (for undocumented vessels), if state-registered length is verified by an authorized officer.

Vessel Tracking System (VTS) means a vessel positioning system certified by NMFS for use on scallop vessels as required by this part.

VTS unit means a device installed on board a vessel used for vessel positioning as required by this part.

§ 650.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 650.4 Vessel permits.

Any vessel of the United States that fishes for, possesses, retains, or lands Atlantic sea scallops in quantities greater than 5 bushels (176.2 1) in-shell or 40 pounds (18.14 kg) shucked scallops per trip, except vessels that fish exclusively for sea scallops in state waters, must have aboard the vessel either a valid limited access permit or a valid general scallop permit issued under this section.

(a) *Limited access permits.* Any vessel of the United States that retains or lands more than 400 pounds (181.44 kg) of shucked scallops per trip or the equivalent amount of in-shell scallops (50 U.S bushels (17.62 hl)), except vessels fishing for sea scallops exclusively in state waters, must have a Federal limited access scallop permit. To qualify for a limited access permit a vessel must meet the following applicable criteria:

(1) *Eligibility in 1994.* To be eligible to obtain a limited access permit for 1994, a vessel must meet one of the following criteria:

(i) *Criteria.* (A) The vessel held a Federal scallop permit in 1988 or 1989 and the vessel landed more than 400 pounds (181.44 kg) of shucked scallops or the equivalent amount of in-shell scallops (50 U.S bushels (17.62 hl)) on any one trip completed during 1988 or 1989; or,

(B) The vessel was under written agreement for construction or for re-rigging on or prior to March 2, 1989, and the vessel obtained a Federal scallop permit and landed scallops between March 2, 1989 and March 2, 1990; or,

(C) The vessel was purchased between March 2, 1989, and November 28, 1990; it had a Federal scallop permit and landed scallops between January 1, 1982 and January 1, 1988; and it had a Federal scallop permit and landed more than 400 pounds (181.44 kg) of scallops on any one trip in 1990; or,

(D) The vessel is replacing a vessel that meets any of the criteria contained in paragraphs (a)(1)(i) (A), (B) or (C) of this section, and the vessel meets the criteria described in paragraph (a)(4) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access permit based on another vessel's fishing and permit history, unless authorized by the Regional Director. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) Application for a limited access permit under this section will not be accepted after 12 months after the effective date of the final regulations for Amendment 4. This section does not affect annual permit renewals.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access permit after 1994, a vessel must have obtained a limited access permit the preceding year, or the vessel must be replacing a vessel that had obtained a limited access permit the preceding year, and, if applicable, the vessel must meet the criteria described in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible to replace a vessel that has been issued a limited access permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 per cent the horsepower of the vessel that was first issued a limited access permit. The horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel first issued a permit has been increased through upgrade or vessel replacement since that permit was issued; and,

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial application of the vessel first issued a limited access permit. The length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel first issued a permit if any or all of these specifications have been increased since that permit was issued through upgrading or vessel replacement. For the purposes of this paragraph, a state-registered or undocumented vessel will be considered to be 5 gross registered tons.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access permit, or to renew a limited access permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20% of the horsepower of the vessel first issued a limited access permit as specified in that vessel's permit application for a limited access permit; and,

(ii) The vessel's length, gross registered tonnage or net tonnage may be upgraded, whether through refitting or replacement, only one. Such an increase shall not exceed 10% each of the length, gross registered tonnage, and net tonnage of the vessel first issued a limited access permit as specified in that vessel's application for a limited access permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size must be increased.

(iii) A replacement of a vessel that does not result in an increasing

horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section that they qualify for a limited access permit if they meet the requirements contained in paragraphs (c) through (g) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access permit by submitting the information described in paragraphs (a)(1) through (5) of this section. In the event the application is denied, the applicant may request an appeal as specified in paragraph (a)(9) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access permit will be issued to the vessel.

(7) *Percentage ownership restrictions.* (i) Any vessel owner is eligible to apply for and be issued the initial limited access permit for a vessel in 1994 provided the vessel meets all pertinent criteria in this part regardless of ownership in other scallop vessels.

(ii) For the years 1995 and thereafter, except as provided in paragraph (a)(7)(iii) of this section, a vessel owner is not eligible to be issued a limited access scallop permit for a vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access vessels in excess of 5 percent of the number of all limited access vessels at the time of permit application.

(iii) Vessel owners who were initially issued a permit for a vessel in 1994, or were issued or renewed a permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(7)(ii) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will exceed the 5 percent ownership restrictions.

(iv) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation or who are partners (general or limited) to a vessel owner.

(8) *Consolidation restriction.* Limited access scallop permits and DAS allocations may not be combined or consolidated from two, or more vessels, onto one vessel.

(9) *Appeal of denial of limited access permit.* (i) Any applicant denied a limited access permit, may appeal the denial within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds and must be in writing, stating the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information that might change an initial decision.

(ii) The Regional Director will appoint a designee who will make the initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the appeal may be presented at either a hearing before an officer appointed by the Regional Director or before an Advisory Appeals Board if established pursuant to paragraph (a)(9)(iv)(B) of this section. The vessel owner forfeits the option to have a hearing before an officer appointed by the Regional Director if he/she requests a review by the Advisory Appeals Board, if such a board is established.

(iv) *Recommendations to the Regional Director*—(A) *Hearing Officer.* If an appeal is reviewed by a hearing officer, the hearing officer shall make a finding and recommendation to the Regional Director which shall be advisory only.

(B) *Advisory Appeals Board.* The Regional Director may establish, or request the Council to establish, an Advisory Appeal Board. If such a board is established and approved by the Regional Director, an appealing vessel owner who is not satisfied with the initial decision, may request that an appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the appeal to the Appeals Board within 15 days after receipt of the appeal. Any appeal reviewed by the Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and recommendations that shall be advisory to the Council, which in turn shall provide a recommendation to the Regional Director.

(v) The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(vi) *Status of vessels pending appeal.* (A) A vessel for which an application has been completed and an appeal has been initiated may fish under the Full-time DAS allocation, pending the appeal, if NMFS has evidence, or the vessel owner can present credible evidence at the time of the appeal, that the vessel participated in at least 10 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any consecutive 12-month period during 1991–1992.

(B) A vessel owner appealing under this part who cannot meet the criteria specified in paragraph (a)(9)(iv)(A) of this section, but who can establish through credible evidence, or NMFS records, that his/her vessel fished at least 5 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any 12 consecutive month period during 1991–1992, may fish under the Part-time DAS allocation of days, pending appeal.

(C) Vessel owners appealing under this part who cannot meet the criteria specified in paragraphs (a)(9)(vi) (A) or (B) of this section, but who can establish through credible evidence, or NMFS records, that their vessel fished at least 1 trip, landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, during 1991–1992, may fish under the Occasional DAS allocation of days, pending appeal.

(D) The decision and notification whether to allow any vessel that presents evidence under paragraphs (a)(9)(vi) (A) through (C) of this section to fish under one of the three categories of DAS, pending the appeal, will be provided by the Regional Director in a letter. Any such decision is the final administrative decision of the Department of Commerce on fishing activity pending the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program.

(b) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access permit, and that possesses, retains, or lands between 40 pounds (18.14 kg) and 400 pounds (181.44 kg) of shucked meats per trip, or the equivalent amount of in-shell scallops (5 and 50 U.S. bushels (176.2 l and 17.62 hl), respectively), except vessels that fish exclusively in state waters for scallops, must have a general scallop permit.

(c) *Condition.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel and vessel's

fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), will be subject to all requirements of this part, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear will remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Vessel application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access permits must be submitted by the date 12 months after date of effectiveness of the final rule. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(e) *Information requirements.* (1) An application for either a limited access or general scallop permit must contain the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access scallop permit must also contain the following:

(i) For every person named by applicants for limited access permits pursuant to paragraph (e)(1) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for;

(ii) The engine horsepower of the vessel as specified in the vessel's permit documentation as of August 3, 1992; or, if the engine horsepower is different from that stated in the vessel's Federal scallop permit as of August 3, 1992, sufficient documentation to ascertain the different engine horsepower;

(iii) If applying for Full-time or Part-time limited access permit, or if opting to use a VTS unit although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 650.25(a); and

(iv) If applying for the small dredge program set forth under § 650.21(e), an annual declaration into the program.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (g) of this section.

(g) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under § 650.4(a)(9), the Regional Director shall issue a vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 650.7.

(ii) The application was not submitted and received in a timely fashion in accordance with paragraphs (a)(1)(iii) and (p) of this section.

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (a) (1) and (2) of this section.

(iv) For applicants applying for a Full-time or Part-time limited access permit, the applicant has failed to meet all of the VTS requirements as described in § 650.25.

(v) The applicant has failed to meet any other application requirements stated in 50 CFR part 650.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(h) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(i) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (l) of this section. Federal fishing vessel permits must be renewed annually.

(j) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, may be charged for issuance of the replacement permit.

(k) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the permit holder must report the change in writing to the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(m) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(n) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by an authorized officer.

(o) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(p) *Limited access permit renewal.* To renew or apply for a limited access permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. For example, to receive a limited access permit for 1996, vessel owners must apply by December 31, 1995. Failure to renew a limited access permit in any year bars the renewal of the permit in subsequent years.

(q) *Voluntary relinquishment of limited access permits.* If a vessel's Federal limited access scallop permit is voluntarily relinquished, no Federal scallop permit may be re-issued or renewed based on the vessel's history, or to any vessel relying on the vessel's history.

§ 650.5 Operator permits.

(a) Any operator of a vessel issued a limited access or general scallop permit, or any operator of a vessel fishing for scallops in the EEZ or in possession of more than 40 pounds (18.14 kg) of shucked scallops, or 5 U.S. bushels (176.2 l) of in-shell scallops, in or harvested from the EEZ, must have in his/her possession a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for a fishing operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), will be subject to all requirements of this part, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear will remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide all the following information any other information required by the Regional Director: name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. Two color passport size photographs of the applicant must also be provided with the permit application.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* The permit will expire upon the renewal date specified by the Regional Director.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the permit number assigned. An applicant for a replacement permit must also provide two color passport size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* A change in the permit holder's name, address or telephone number must be reported in writing to the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity. Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 650.6 Dealer permits.

(a) All dealers must have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a dealer's permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number; and name and signature of the person responsible for the truth and accuracy of the report. If the dealer represents a corporation, a certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in

accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 650.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the permit holder must report the change in writing to the Regional Director. If written notice of the change in formation is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 650.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Dealers shall provide at least the following information to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by, or by means approved by, the Regional Director. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which scallops are landed or received; dates of purchases; pounds by species; price by species; and port landed.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on that form is voluntary. Reports shall be submitted to an address supplied by the Regional Director.

(3) *Inspection.* The dealer shall make copies of the required reports that have been submitted, should have been submitted, or the records upon which the reports were based, available immediately upon request for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for one year after the date of the last entry on the report. The dealer shall retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be sent and postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(b) *Vessel owners*—(1) *Fishing log reports.* The owner of any vessel holding a Federal scallop permit shall maintain on board the vessel an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. Vessel owners may submit reports electronically, for example using the VTS, or through other media approved by the Regional Director. The following information, and any other information required by the Regional Director, must be provided: Vessel name; USCG documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; all species landed and discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make fishing log reports currently in use, or to be submitted, available for inspection by an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for one year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be sent and, if mailed, postmarked, within 15 days of the last calendar day of the month in which a trip was landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 650.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and over 25 feet (7.6 m) in length must display its name on

the port and starboard sides of the bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessels subject to this part over 25 feet (7.6 m) in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S. Code.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part will:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 650.9 Prohibitions.

(a) In addition to the prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1) Possess, retain, or land in-shell sea scallops smaller than the minimum size specified in § 650.20(a) at or prior to the time when a dealer receives or possesses those sea scallops for a commercial purpose. All Atlantic sea scallops will be subject to inspection and enforcement, in accordance with the compliance and sampling procedures specified in § 650.20(b), up to and including the time when a dealer receives or possesses sea scallops for a commercial purpose.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 650.7(b).

(3) Possess, retain, or land sea scallops unless the operator of the vessel has been issued an operator's permit under § 650.5, and the permit is on board the vessel and is valid.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 650.4(l) or § 650.5(k).

(5) Make any false statement in connection with an application under § 650.4 or § 650.5.

(6) Fail to affix and maintain permanent markings as required by § 650.8.

(7) Sell or transfer, or attempt to sell or transfer, to a dealer any sea scallops unless the dealer has a valid dealer's permit issued under § 650.6.

(8) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer Atlantic sea scallops or fish from one vessel to another.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1) Possess, retain, or land more than 400 pounds (181.44 kg) of shucked sea scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 650.26, unless exempted from DAS allocations as provided in § 650.27.

(2) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 650.25(a) on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 650.26.

(3) If the vessel is not subject to VTS requirements specified in § 650.26, fail to comply with any aspect of the call-in system as specified in § 650.26(b).

(4) Combine, transfer, or consolidate DAS allocations from any vessel onto another vessel that has its own DAS allocation.

(5) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access permits, except as provided in § 650.4(a)(7)(iii).

(6) Increase or upgrade the horsepower of such vessel or its replacement except as specified in § 650.4(a)(5).

(7) Increase or upgrade the length, gross registered tonnage or net tonnage of such vessel or its replacement except as specified in § 650.4(a)(5).

(8) Fish under the DAS allocation program with trawl nets that have a maximum sweep exceeding 144 feet (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net.

(9) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size, as specified in § 650.21(a)(2).

(10) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that violate the provisions of § 650.21(a)(3).

(11) Fish under the DAS allocation program with dredge gear that has a maximum combined dredge width greater than 31 feet (9.4 m), measured at the widest point in the bail of each dredge.

(12) Fish under the DAS allocation program with dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 650.21(b)(2).

(13) Fish under the DAS allocation program with dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3).

(14) Use more than double links between rings of dredge gear.

(15) Use cookies, chafing gear or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, other than double links as specified and described in § 650.21(b)(4).

(16) Fish under the DAS allocation program with more than 9 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(17) Fish under the small dredge program as specified in § 650.21(e) with a dredge that is greater than 10 feet 6 inches (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(18) Fish under the small dredge program as specified in § 650.21(e) with more than 5 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(19) Use shucking machines on board a vessel, or sorting machines on board a vessel that shucks scallops at sea, unless otherwise authorized by the Regional Director.

(20) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(21) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(22) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 650.28.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 650.26.

(24) Fail to comply with any requirement for participating in the DAS

Exemption Program as specified in § 650.27.

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit under § 650.4(b) to possess, retain, or land more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops.

(d) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a), (b) and (c) of this section, it is unlawful for any person to do any of the following:

(1) Possess, retain, or land sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of the in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued a general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(2) Possess, retain, or land sea scallops in excess of 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued a limited access scallop permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), or

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(3) Possess, retain, or land sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of the in-shell scallops unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit under § 650.5 and the permit is on board the vessel and is valid, or

(ii) The scallops were harvested by a vessel not issued a Federal scallop permit and that fishes for scallops exclusively in state waters.

(4) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, or attempt to land, offload, cause to be offloaded, sell or transfer sea scallops, from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 650.7, unless the scallops were harvested by a vessel without a Federal sea scallop permit and that fishes for scallops exclusively in state waters.

(5) Purchase or receive scallops, or attempt to purchase or receive scallops, whether on land or at sea, as a dealer without accurately preparing, submitting and retaining, in a timely fashion, the documents required by § 650.7.

(6) Land, offload, remove, otherwise transfer, or attempt to land, offload, remove or otherwise transfer, Atlantic sea scallops from one vessel to another.

(7) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose any sea scallops from a trip whose catch is 40 pounds (18.14 kg) of shucked scallops or less, or 5 U.S. bushels (176.1 l) of in-shell scallops unless the vessel has been issued a valid Federal general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or the scallops were harvested by a vessel without a Federal scallop permit that fishes for scallops exclusively in state waters.

(8) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, sea scallops taken from a fishing vessel, unless in possession of a valid dealer's permit issued under § 650.6.

(9) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, sea scallops caught by a vessel other than one issued a valid federal general or limited access sea scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

(11) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops.

(12) Make any false statement on any report required to be submitted or maintained under § 650.7.

(13) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS or VTS signal required to be installed on, or transmitted by, Full-time and Part-time limited access scallop vessels or any other vessel required to use a VTS by this part.

(14) Possess, retain, or land in-shell sea scallops smaller than the minimum size specified in § 650.20 at or prior to the time when a dealer receives or possesses those sea scallops for a commercial purpose. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.20, up to and including the time when a dealer receives or possesses those sea scallops for a commercial purpose.

(15) Violate any provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(e) Any person possessing, retaining, or landing sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops at or prior to the time when those scallops are received or possessed by a dealer is subject to all of the prohibitions specified in paragraphs (a) and (b) of this section, unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(f) *Presumption.* Sea scallops that are possessed, retained, or landed at or prior to the time when the scallops are received by a dealer, or sea scallops that are possessed by a dealer, are presumed to be harvested from the EEZ. A preponderance of all submitted evidence, that such scallops were harvested by a vessel without a Federal scallop permit and fishing exclusively for scallops in state waters, will be sufficient to rebut the presumption.

§ 650.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 650.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 650.20 Shell-height standard.

(a) The minimum shell height for in-shell Atlantic sea scallops is 3½ inches (89 mm).

(b) Compliance and sampling. Compliance with the specified shell-height standards will be determined by inspection and enforcement up to and including the first transfer of scallops from a fishing vessel to a dealer, or person acting in the capacity of a dealer, as follows: the authorized officer will take samples of forty scallops each at random from the total amount of scallops in possession. The person in

possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of all scallops sampled are less than the shell height specified by the standard. The shell height shall be measured in a straight line from the hinge of the scallop to the outermost part of the curve on the leading edge. The total amount of scallops in possession will be deemed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

§ 650.21 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access permit under § 650.4(a), while fishing under the DAS program for sea scallops, must comply with the following:

(1) *Maximum sweep.* The maximum trawl sweep must not exceed 144 feet (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Minimum mesh size restrictions.* (i) In 1994 and 1995, the minimum mesh size is 5 inches (12.7 cm) south of a line commencing at the shoreline and proceeding easterly along 39°10′ N. Latitude until it intersects the outer boundary of the EEZ, and 5½ inches (13.97 cm) for any scallop trawl net north of this line.

(ii) In 1996 and beyond, the minimum size for any scallop trawl net in all areas is 5½ inches (13.97 cm).

(iii) No vessel may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraph (a)(2)(i) of this section, or mesh that is rigged in a manner that is inconsistent with paragraph (a)(3) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered not to be "available for immediate use":

(A) A net stowed below deck, provided:

(*1*) It is located below the main working deck from which the net is deployed and retrieved;

(*2*) The towing wires, including the "leg" wires, are detached from the net;

(*3*) It is fan-folded (flaked) and bound around its circumference.

(B) A net stowed and lashed down on deck, provided:

(*1*) It is fan-folded (flaked) and bound around its circumference;

(*2*) It is securely fastened to the deck or rail of the vessel; and

(*3*) The towing wires, including the leg wires, are detached from the net.

(C) A net that is on a reel and is covered and secured, provided:

(*1*) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(*2*) The towing wires, including the leg wires, are detached from the net; and

(*3*) The codend is removed from the net and stored below deck.

(D) Nets that are secured in a manner authorized by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets.

(iv) Mesh sizes shall be determined by using a wedgeshaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions.* (i) A fishing vessel may not use any means, device, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net, except that, one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of a trawl net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purposes of this subparagraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(ii) A fishing vessel may not use any mesh construction or other means on, or in the top of, the regulated portion of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net, or otherwise diminishes the effectiveness of the mesh size.

(iii) No net may be used in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels holding a Federal sea scallop permit under § 650.4 and in possession of sea scallops, or limited access vessels in the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 or less pounds (181.44 kg) of sea scallops, must comply with the following restrictions:

(1) *Dredge width.* The maximum combined dredge width on a permitted scallop dredge vessel shall not exceed 31 feet (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section.

(2) *Minimum mesh size.* (i) The minimum mesh size of net material on the top of a scallop dredge is 5½ inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iv) of this section.

(3) *Minimum ring size.* (i) For 1994 and 1995, the minimum inside ring size of a scallop dredge is 3¼ inches (83 mm).

(ii) For 1996 and thereafter, the minimum inside ring size is 3½ inches (89 mm).

(iii) Ring sizes are determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The ring size will be the average of the measurements of any series of 20 consecutive rings. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions.* (i) No chafing gear or cookies shall be used on the top of a scallop dredge;

(ii) No more than double links between rings shall be used in or on scallop dredges;

(iii) No material, device, net, or dredge configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not have in use any such material, device, or net or dredge configuration or design.

(c) *Crew restrictions.* Limited access vessels fishing under the scallop DAS program may have no more than nine people, including the operator, on board unless fishing under the small dredge program specified in § 650.21(e), or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program.

(2) Sorting machines are prohibited on limited access vessels fishing under

the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the Part-time or Occasional category may request to be placed in one category higher on the annual vessel permit application as described under § 650.4(e)(2)(iv). Vessel owners making such a request will be placed in the appropriate category, for the entire year, if they agree to comply with the following restrictions when fishing under the DAS program described in § 650.24, or are in possession of more than 400 lbs. (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of inshell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 foot (3.2 m) in width;

(2) The vessel is prohibited from having more than one dredge on board or in use; and,

(3) The vessel may have no more than five people, including the captain, on board.

§ 650.22 Possession restrictions.

(a) Owners or operators of vessels with a Limited Access permit that have declared out of the DAS program as specified in § 650.26, or have used up their DAS allocations and vessels possessing a General Scallop Permit, unless exempted under the DAS exemption program described under § 650.27, are prohibited from retaining, landing, or possessing more than 400 pounds (181.44 kg) of shucked scallops, or 50 U.S. bushels (17.62 hl) of in-shell scallops per trip, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a Federal sea scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from retaining, landing or possessing more than 40 pounds (18.14 kg) of shucked sea scallops, or 5 U.S. bushels (176.2 l) of in-shell sea scallops. Owners or operators of vessels without Federal scallop permits are prohibited from selling, bartering, or trading sea scallops harvested from Federal waters.

§ 650.23 Transfer-at-sea.

(a) Owners or operators of vessels permitted under § 650.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel, or other conveyance, at-sea.

(b) All persons are prohibited from transferring or attempting to transfer sea scallops from one vessel to another vessel, or other conveyance, at-sea.

§ 650.24 Days-at-sea (DAS) allocations.

Each vessel issued a limited access permit shall be assigned to a DAS category based on evidence and criteria as specified in paragraph (a) of this section. Limited access permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing, or possessing more than 400 pounds (181.44 kg) of sea scallops per trip once their allocated number of DAS, as specified under paragraph (c) of this section, are used up.

(a) *Criteria for assigning DAS categories.* All vessels qualifying for a limited access permit under the criteria specified in § 650.4(a) shall be assigned to the Full-time, Part-time, or Occasional DAS category based on the formulas specified in paragraph (b) of this section and the following:

(1) *Full-time.* A vessel shall be assigned to the Full-time category if that vessel has averaged at least 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(2) *Part-time.* A vessel shall be assigned to the Part-time category if that vessel has averaged more than 37 days but less than 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(3) *Occasional.* A vessel shall be assigned to the Occasional category if that vessel has averaged 37 days or less of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section.

(b) *DAS formulas.* A vessel's average number of days of directed scallop fishing for purposes of assigning the vessel to one of the categories specified in paragraph (a) of this section shall be determined by applying one of the following formulas to the data, information, or other credible evidence available to the Regional Director. Scallop DAS for this purpose is defined as the total days at sea on trips with landings of more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops.

(1) The following formulas apply to all vessels qualifying for limited access permits, with the exception of vessels that qualify under paragraph § 650.4(a)(1)(i)(C). The DAS formula applicable to that group of vessels is specified in paragraph (b)(2) of this section. Vessel owners may choose their 1990 history under paragraph (b)(1)(i) of this section, or a calculation based on the 1985–1990 history, as applicable, under paragraph (b)(1)(ii). DAS are calculated from the formulas below and the result is applied to the DAS categories described in paragraph (a) of this section.

(i) *1990 fishing history.* For any vessel that fished for scallops in 1990, the number of scallop DAS may be determined by calculating the total number of DAS on scallop trips ending in 1990; or,

(ii) *1985–1990 fishing history.* For vessels with history in the scallop fishery between 1985 and 1990, inclusive, the number of years history is determined as follows. With the exception of the adjustments specified under paragraphs (b)(1) (iii) and (iv) of this section, vessels whose calculated scallop history is based on a formula below must use their entire history in the scallop fishery and may not elect to use a formula based on fewer years history in the fishery.

(A) *Four or more years history.* Calculate the total number of scallop DAS for each year, exclude the high and low years of days at sea and average the remaining years; or,

(B) *Three year history.* Calculate the total number of scallop DAS for each year, average the high and low years of days at sea, and then average the result with the third year; or,

(C) *Two year history.* Calculate the total number of scallop DAS for each year, average the two years' DAS; or,

(D) *One year history.* Calculate the actual number of scallop DAS for that year.

(iii) *Pro-ration.* If a limited access vessel entered the scallop fishery for the first time during the relevant time period, the first year shall be pro-rated to a full year by pro-rating on an annual basis the number of DAS the vessel actually incurred on trips landing more than 400 pounds (181.44 kg) of scallops to determine the number of days at sea the vessel would have incurred had the vessel been in the fishery for the full year. The pro-ration formula is as follows: The total number of scallop DAS in that year is divided by the percentage of the year the vessel was in the fishery (by month). In pro-rating the days for such vessels, the Regional Director shall take into account the date the vessel entered the fishery, the vessel's subsequent fishing history, and other relevant information.

(iv) *New owner.* Vessel owners who purchased their vessel during the 1985–1990 time period may request that the DAS formulas be based solely on their individual history in the scallop fishery, excluding all previous owner's scallop histories. Under this option a vessel's first year in the fishery may be pro-rated based on the criteria specified in paragraph (b)(1)(iii) of this section.

(2) For vessels qualifying for a limited access scallop permit under paragraph § 650.4(a)(1)(i)(C). Pro-rate to a full year the total number of days the vessel would have fished and landed over 400 pounds (181.44 kg) of scallops in 1990 based on the actual number of days the vessel did fish in 1990 and the criteria specified in paragraph (b)(1)(iii) of this section. Then, calculate the average number of DAS for trips landing more than 400 pounds (181.44 kg) of scallops for the years 1991 and 1992. The number of days to determine the category shall be the lower number between the pro-rated 1990 days and the average of DAS in 1991 and 1992.

(c) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of days at sea (DAS) it may participate in the limited access scallop fishery, according to the category for which it qualifies. A vessel that has declared out of the scallop fishery pursuant to the provisions of § 650.26, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess, retain, or land more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.61 hl) of in-shell scallops and complies with the other requirements of this part.

(1) *Annual DAS allocations.* The annual allocations of DAS for each category of vessel specified in paragraph (a) of this section shall be as follows:

DAS category	1994	1995–96	1997	1998–99	2000+
Full-time	204	182	164	142	120
Part-time	91	82	66	57	48
Occasional	18	16	14	12	10

(2) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. A DAS is calculated beginning when a vessel leaves port and ending when the vessel returns to port as follows:

(i) DAS for vessels that are under the VTS monitoring system described in § 650.25 are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(ii) DAS for vessels fishing under the call-in notification system are counted using the departure date and time reported under § 650.26(b).

(d) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(e) *Notice of initial DAS category.* The Regional Director will notify all owners of vessels that are deemed eligible to be issued a limited access scallop permit pursuant to § 650.4(a)(6) as to which category the vessel qualifies for based on data, information and other evidence available to the Regional Director.

(f) *Appeal of DAS category.* (1) *Appeal criteria.* Initial placement of a vessel into a vessel category may be appealed to the Regional Director within 30 days of receipt of the notice of a vessel's DAS category. Any such appeal must be based on one or more of the following grounds, and must be in writing stating the grounds for the appeal:

(i) The information used by the Regional Director was based on mistaken or incorrect data;

(ii) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(iii) The applicant has new or additional information which might change the initial decision.

(2) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(3) If the applicant is not satisfied with the initial decision, the appeal may be presented at either a hearing before an officer appointed by the Regional Director or before an Advisory Appeals Board as described in § 650.4(a)(9)(iv) of this section. The vessel owner forfeits the option to have a hearing before an officer appointed by the Regional Director if he/she requests a review by the Advisory Appeals Board, if such a board is established.

(4) Recommendations to the Regional Director. (i) Hearing Officer. If an appeal is reviewed by a hearing officer, the hearing officer shall make a finding and recommendation to the Regional Director which shall be advisory only.

(ii) Advisory Appeals Board. If an Advisory Appeals Board is established under § 650.4(a)(9)(iv), an appealing vessel owner who is not satisfied with the initial decision, may request that an appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the appeal to the Appeals Board within 15 days after receipt of the appeal. Any appeal reviewed by the Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and recommendations that shall be advisory to the Council, which in turn shall provide a recommendation to the Regional Director.

(5) The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(6) Status of vessels pending appeal. All vessels, while appealing their DAS category, may fish under the DAS allocation allowed under the next higher category than the vessel's initial category placement, regardless of what category the vessel is appealing to be placed in, and are subject to all requirements applicable to such category of vessels unless otherwise exempted. That is , if a vessel was initially placed in the Part-time category, that vessel may fish up to the maximum number of DAS allocated to Full-time vessels until the Regional Director has made a final determination on the appeal. If a vessel is initially placed in the Occasional category, that vessel may fish up to the DAS allocated to Part-time vessels, regardless of what category the Occasional vessel is appealing to be placed in, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for scallops shall be counted against the DAS allocation of the category that the vessel is ultimately placed in. If, before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal the excess days will be subtracted from the vessel's allocation of days in 1995.

(g) *End-of-year-over.* Limited access vessels with unused DAS on December 31 of any year may carry-over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(h) *Good Samaritan credit.* Limited access vessels fishing under the DAS

program and that spend time at sea for one of the following reasons, and that can document the occurrence through the Coast Guard, will be credited for the time documented:

(1) time spent assisting in a Coast Guard search and rescue, operation; or,

(2) time spent assisting the Coast Guard in towing a disabled vessel.

§ 650.25 Monitoring requirements.

(a) *Full-time and Part-time limited access vessels.* To be issued a Full-time or Part-time limited access scallop permit as specified in § 650.4(a), all vessels must provide documentation to the Regional Director that the vessel has an operational VTS unit on board that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. This VTS must be a certified unit as specified in paragraph (a)(1) of this section.

(1) *Certification.* The Regional Director will annually certify VTS's that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of certified systems will be published in the **Federal Register** upon addition or deletion of a system from the list. In the event that a system is deleted from the list, vessel owners that purchased that system prior to publication of the revised list will be considered to be in compliance with the requirement to have a certified unit.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, it a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden;

(ii) VTS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) VTS equipment shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 meters (1,300 feet);

(iv) The VTS shall have the capability of transmitting and storing information including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow NOAA/NMFS to poll individual vessels or any set of vessels at any time and receive position reports in real time; for the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position;

(vi) The VTS must be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission will be in ASCII test in a file format acceptable to NMFS;

(viii) The VTS must be capable of providing vessel locations relative to international boundaries and fishery management areas;

(ix) The VTS vendor must have the capacity to archive vessel position histories for a minimum of 1 year and to provide transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* Failure of a VTS unit to transmit an hourly signal of a vessel's position shall be presumed to count against a DAS, or fraction thereof, for as long as the unit fails to transmit a signal. Provision of a preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or was not at sea will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, vessel owners must submit documentation to the Regional Director, within 3 days and prior to their next trip, verifying that the new VTS unit is an operational certified system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a Full-time or Part-time scallop permit, all vessel owners must agree to allow the NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's:

(i) ability to operate properly;

(ii) signal; or

(iii) the accuracy of the vessel's position fix.

(b) *Occasional limited access vessels.* Vessels qualifying for a DAS allocation under the Occasional category as described under § 650.24(a)(3), may participate in either the DAS notification program using the VTS procedures described in § 650.26(a) or the call-in procedures described in § 650.25(b).

§ 650.26 DAS notification program.

(a) *VTS notification.* Owners of scallop vessels with Full-time or Part-time limited access vessel permits, owners of vessels with Occasional limited access permits that have elected to fish under the VTS monitoring system specified in § 650.25, and vessels fishing under the small dredge program specified in § 650.24(e), must notify the Regional Director by VTS, prior to leaving port, of their intent to fish under their DAS allocation as follows:

(1) Full-time scallop vessels are deemed to be fishing under the DAS allocation program unless they declare out of the sea scallop fishery for a specific time period by notifying the Regional Director.

(2) Owners of Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director.

(3) If the VTS is not available, and if authorized by the Regional Director, a vessel owner must notify as required in paragraphs (a)(1) and (a)(2) of this section and report using the call-in notification system described under paragraph (b) of this section.

(b) *Call-in notification.* Owners of vessels qualifying for a DAS allocation under the occasional category as described under § 650.24(a)(3) or fishing in the Part-time category under the Appeal Program described in § 650.24(f), who have not elected to fish under the VTS monitoring system described in § 650.25, and vessels fishing during appeal as specified in § 650.4(a)(9)(vi)(D), must notify the Regional Director of participation in the scallop DAS allocation program prior to leaving port on each trip. Vessel owners may participate in the VTS notification system described under paragraph (a) of this section, or may notify the Regional Director by calling (508–281–9335) or faxing (508–281–9135) the following

information at least 2 hours prior to leaving port and within one hour of return to port: Owner and caller name and phone number; the vessel's name and permit number; and the time, and departure date or ending date, as appropriate.

§ 650.27 DAS exemption program.

Any vessel holding a limited access scallop permit under section § 650.4(a) may request an exemption from the DAS Program while scallop fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements specified under § 650.24(c).

(a) *VTS notification.* Vessel owners requesting a DAS exemption via a VTS shall:

(1) Notify NMFS, via their VTS, prior to the vessel's first trip under the DAS exemption program, that the vessel will be fishing exclusively in state waters for scallops; and,

(2) Notify NMFS, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(b) *Other methods of notification.* Vessel owners opting to request entry into the DAS exemption program via fax or phone shall:

(1) Notify NMFS by calling 508–281–9335 or faxing 508–281–9135 the following information at least 7 days prior to the date on which the exemption is requested: owner and caller name and address; vessel name and permit number; and beginning and ending dates of the exemption period;

(2) Remain in the exemption program a minimum of 7 days; and,

(3) If an exemption holder has been in the program a minimum of 7 days and wishes to withdraw earlier than the designated end of the exemption period, the exemption holder must notify the Regional Director of early withdrawal from the program. Notification of withdrawal is made by calling 508–281–9335 or by faxing 508–281–9135. When providing notice, the exemption holder will specify that the request is for withdrawal from the program and provide the vessel name and permit number, and the name and phone number of the caller. The exemption holder may not leave port to fish for scallops in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(c) A vessel participating in the DAS exemption program may not fish in the EEZ during the participation period.

(d) Participation in the DAS exemption program expires when the owner's or vessel's name changes.

(e) Vessels participating in the DAS exemption program continue to be subject to all the other requirements of this part.

§ 650.28 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a Federal sea scallop permit.

(b) Owners of vessels selected for observer coverage will be required to notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any Atlantic sea scallops. Notification procedures will be specified in selection to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 650.29 Experimental fishing exemption.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless its is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

Subpart C—Framework Adjustments to Management Measures

§ 650.40 Framework specifications.

(a) Annually, upon request from the Council, but at a minimum in the years 1996 and 1999, the Regional Director will provide the Council with information on the status of the sea scallop resource.

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the Atlantic sea scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 650.24(c), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments, or additional management measures, are necessary to meet the goals and objectives of the FMP. If the Council determines that adjustments to, or additional, management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments to, or addition of, management measures must come from one or more of the following categories:

(1) DAS changes;
(2) shell height;
(3) offloading window re-instatement;
(4) effort monitoring;
(5) data reporting;
(6) trip limits;
(7) gear restrictions;
(8) permitting restrictions;
(9) crew limits;

(10) small mesh line;

(11) on board observers;

(12) any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the timing of the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and have regulations in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to provide further protection for the resource; and,

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d), the action will be published in the **Federal Register** as a final rule; or,

(2) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur with the Council's recommended management measures, the Council will be notified, in writing, of the reasons for the non-concurrence. The Council may reconsider its prior action and recommend a new action under paragraph (d) of this section.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

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Notices

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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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation and the Model Rules Working Group; Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committee on Regulation and of the Model Rules Working Group of the Administrative Conference of the United States.

Committee on Regulation

DATES: Monday, September 20, 1993 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Model Rules Working Group

DATES: Monday, September 20, 1993, at 12 noon.

ADDRESSES: Washington Office Center, 409 3rd Street, SW., suite 320, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Regulation will meet to continue to discuss the project on federal agency use of audited self-certification as a regulatory technique and the status of any other pending projects. The project is being undertaken for the Conference by Professor Douglas Michael of the University of Kentucky. The Committee will also discuss a new study by Professor Donald Hornstein of the University of North Carolina School of Law, on pesticides registration and cancellation.

The Model Rules Working Group will meet for the last time to discuss the final set of model rules of practice and procedure which can be used by Federal agencies informal adjudications.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: August 30, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–21414 Filed 9–1–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 930637–3137]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of establishment of a Laboratory Accreditation Program (LAP)—NVLAP Energy Efficient Lighting Products Program (EEL).

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), announces the establishment of the Energy Efficient Lighting Products Program. The program is in accord with the intent of the original request by the National Electrical Manufacturers' Association as announced previously in the **Federal Register.**

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Persons desiring to obtain an application package or further information for the EEL program should write to the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899; Phone 301–975–4016; FAX 301–926–2884.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with § 7.17 of the NVLAP Procedures (15 CFR part 7). In May 1991, NIST announced (56 FR 22396 May 15, 1991) the development of the NVLAP program, "Accreditation for Testing Energy Efficient Lighting (EEL) Products." NVLAP determines a laboratory's ability to meet established criteria and technical requirements for accreditation of specific test methods through on-site assessments by technical experts and laboratory participation in proficiency testing programs. In the implementation of the EEL Program, NVLAP offers accreditation for testing the electrical, photometric, colorimetric, and life-performance characteristics of fluorescent, incandescent, and high-intensity discharge lamps, and includes test methods for photometric characteristics of luminaires (lighting fixtures). The EEL program requirements have been established and are available from NVLAP in an application package that includes the program handbook, list of test methods offered for accreditation, application forms, and fee schedule.

Scope of Accreditation

The standard test methods and related performance standards listed below comprise the scope of accreditation of the EEL program.

Notation: LM signifies documents developed by the Illuminating Engineering Society (IES).

LM–9—Electrical and photometric measurements of fluorescent lamps
LM–10—Photometric testing of outdoor fluorescent luminaires
LM–20—Photometric measuring and reporting tests on reflector type lamps
LM–31—Photometric testing of roadway luminaires using incandescent filament and high intensity discharge lamps
LM–35—Photometric testing of floodlights using incandescent filament or discharge lamps
LM–40—Life performance testing of fluorescent lamps

LM–41—Photometric testing of indoor fluorescent luminaires
LM–45—Electrical and photometric measurements of general service incandescent lamps
LM–46—Photometric testing of indoor luminaires using high intensity discharge or incandescent filament lamps
LM–47—Life testing of high intensity discharge (HID) lamps
LM–49—Life testing of general lighting incandescent filament lamps
LM–51—Electrical and photometric measurements of high intensity discharge lamps
LM–58—Guide to spectroradiometric measurements
LM–65—Life testing of single-ended compact fluorescent lamps
LM–66—Electrical and photometric measurements of single-ended compact fluorescent lamps

Notation: ANSI designates American National Standards Institute.

ANSI C78.375—Fluorescent lamps—guide for electrical measurements
ANSI C78.386—Mercury lamps—methods of measuring characteristics
ANSI C78.387—Metal-halide lamps—methods of measuring characteristics
ANSI C78.388—High-pressure sodium lamps—methods of measuring characteristics

Dated: August 27, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–21328 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–13–M

Bureau of Export Administration

[Docket No. 930823-3223]

Foreign Availability Assessment: Certain Telecommunications Transmission Equipment

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is providing notice that it has initiated an assessment of foreign availability of telecommunications transmission equipment operating according to the synchronous digital hierarchy at digital transfer rates up to 623 million bits per second to controlled countries. These items are controlled for national security reasons under subparagraph (a) of Export Control Classification Number (ECCN) 5A02A of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1): Telecommunications Transmission Equipment. OFA will assess foreign availability under the provisions of Part 791 of the Export Administration Regulations (EAR). OFA is seeking public comments on the foreign availability of these items worldwide.

DATES: The period for submission of information will close October 4, 1993.

ADDRESSES: Submit information relating to this foreign availability assessment to: Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room 1087, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael Andrews, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 482-5953.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On August 9, 1993, OFA accepted a foreign availability submission pursuant to section 5(f) of the EAA relating to the decontrol of telecommunications transmission equipment operating according to the synchronous digital hierarchy at digital transfer rates up to 623 million bits per second to controlled countries. These items are controlled for national security reasons under subparagraph (a) of Export Control Classification Number (ECCN) 5A02A of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1): Telecommunications Transmission Equipment.

Telecommunications transmission equipment is used to send simultaneously multiple voice conversations and digital data packets between different locations in telephone networks. The synchronous digital hierarchy is the most recent internationally-defined protocol standard for the design and installation of telecommunications transmission equipment.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By January 9, 1994, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

—Product names and model designations of the U.S. and non-U.S. items;
—Names and locations of non-U.S. sources;
—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—An estimate of market demand and the potential economic impact of the control on the U.S. item;
—Extent to which any allegedly comparable item is based on U.S. technology;
—Product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information. The top of each page should be marked with the term "Confidential Information." Confidential submissions must include a statement from the submitter that the material is commercial or financial

information which the submitter does not customarily release to the public. If OFA will not accept the submission in confidence, it will return it. A non-confidential summary must accompany such submissions of confidential information. OFA will make the summary available for public inspection.

Regardless of whether the submitter has requested confidential treatment, OFA will maintain the confidentiality of any information exempt from disclosure under the Freedom of Information Act (5 U.S.C. 522). This may include communications from agencies of the United States Government and foreign governments which are exempt from disclosure under the Freedom of Information Act.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Due to the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close October 4, 1993. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: August 27, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21432 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DT–P

Computer Systems Technical Advisory Committee; Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 22 & 23, 1993, in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session

September 22, 9 a.m.—10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session

September 22, 10 a.m.–3 p.m.

2. Opening remarks by the Chairmen.
3. Presentation of papers or comments by the public.
4. Discussion on treatment of software, commodity or technical data.
5. Discussion on safeguard conditions for high performance computers.
6. Update on controls on graphics equipment and on RAMDACs (digital-to-analog converters) under the Missile Technology Regime.
7. Discussion on Composite Theoretical Performance (CTP) clip levels for the project license, the distribution license, et al.
8. Discussion on CTP formula changes.
9. Report on the new CCL numbering system.
10. Status report on Elaine III.

Executive Session

September 22, 3 p.m.–5 p.m.

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Executive Session

September 23, 9 a.m.–3:30 p.m.

12. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Sessions of the meeting will open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, room 1621, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 27, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–21431 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DT–M

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009; Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 200 Census and Census-Related Activities for 2000–2009. The meeting will convene on Thursday, September 23, 1993,

continuing through Friday, September 24, 1993, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC. The Advisory Committee is composed of a Chair, twenty-five member organizations, and nine 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 design for the 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 1 p.m. on Thursday, September 23, 1993, and adjourn at 4 p.m. on Friday, September 24, 1993.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC.

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, Department of Commerce, Bureau of the Census, room 2066, Federal Building 3, Washington, DC 20233. Telephone: (301) 763–7298.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes consideration of a test design recommendation for the 1995 test census, 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 above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 763–7298.

Dated: August 25, 1993.

Frederick T. Knickerbocker,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 93–21433 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–EA–M

Foreign-Trade Zones Board

[Docket 45–93]

Foreign-Trade Zone 50—Long Beach, CA; Application for Subzone, Alps Manufacturing (USA) Plants (Computer/Telecommunication/Video Equipment and Auto Parts) Long Beach/Los Angeles Port of Entry Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the computer/telecommunication/video equipment and auto electronic parts manufacturing facilities of Alps Manufacturing (USA), Inc. (Alps) (affiliated with Alps Electric Company, Ltd., Japan), in Garden Grove and in Compton, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 16, 1993.

The Alps facilities involve two sites: Site 1 (13.5 acres)—main manufacturing plant, 7301 Orangewood Avenue, Garden Grove (Orange County); and, Site 2 (2.7 acres)—warehousing and packaging facility, 1701 West Walnut Parkway, Compton (Los Angeles County). The facilities (650 employees) are currently used to manufacture computer keyboards, graphic input devices, floppy disk drives, auto switches, and auto airbag clock spring reel devices. Other products that may be manufactured at the facilities include a variety of computer/telecommunication/video equipment/components and auto electronic components, including laptop/palmtop computers, printers, computer game units and cartridges, joysticks, hard disk drives, liquid crytal displays (LCDs), monitors, keyboard switches, LAN systems, keyless entry devices, heads-up displays, computer docking systems, control panel assemblies with LCD, digital pen pointers, remote control units, digital compass units, cellular phone assemblies, multipiler module assemblies, auto switch modules, RF tuners, and optical/mechanical equipment.

Certain parts and materials are sourced from abroad (some 25 percent of finished product value) including: Switches, cables, circuit boards, components for disk drive units, and switch assemblies. Other products that may also be sourced from abroad include parts for computer and other data processing equipment, audio/video equipment/components, TV receivers/parts, glass envelopes, lenses, electrical equipment, capacitors, resistors, transistors, microphones, instruments, medical equipment, radar/radio equipment, motor vehicle parts, fasteners, springs, shafts, wire, certain chemicals, rubber products, packaging materials, and typewriter ribbons.

Zone procedures would exempt Alps from Customs duty payments on the foreign materials that are exported. On its domestic sales, the company would be able to choose the duty rates that apply to the finished products (zero to 8.2%). The duty rates on foreign-sourced components currently used at the plant range from duty-free to 5.3 percent, and the duty rate on other components that may also be sourced from abroad range from duty-free to 16 percent. For example, keyboards are duty free while the rate on certain keyboard components is 5.3 percent. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 16, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11000 Wilshire Boulevard, Room 9200, Los Angeles, CA 90049

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 23, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21425 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 46–93]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign-Trade Zone, Inc. (VJFTZ), grantee of FTZ 158, requesting authority to expand its zone at sites in the Vicksburg and Jackson, Mississippi, area, within the Vicksburg/Jackson Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 18, 1993.

FTZ 158 was approved on April 11, 1989 (Board Order 430, 54 FR 15480; 4/18/89), and currently consists of two sites in the Vicksburg/Jackson, Mississippi, area:

Site 1 (26 acres)—parcel within the Emmitte W. Haining Industrial Center, Port of Vicksburg Public Terminal, Yazoo River Division Canal, Warren County, one mile northwest of Vicksburg.

Site 2 (27 acres)—two parcels at the Jackson International Airport, Jackson.

The applicant is now requesting authority to expand existing Sites 1 and 2, and to add five new sites to the zone. As proposed, the project would involve seven public sites (5500 acres), all of which are owned or controlled by the County of Warren or the City of Jackson or affiliated agencies:

Site 1—Expand to include the entire Emmitte W. Haining Industrial Center, Warren County (353 acres).

Site 2—Expand to include the entire Jackson International Airport complex, Jackson (2,242 acres).

Site 3—Ceres Research and Industrial Interplex (1,286 acres), on I–20, Warren County.

Site 4—Vicksburg Airport Industrial Park (230 acres), Vicksburg.

Site 5—Greater Jackson Industrial Center (544 acres), on I–55, south of Jackson in Hinds County.

Site 6—Hawkins Field Industrial Park (559 acres), south of I–220/U.S. 49 Interchange, Jackson.

Site 7—Northwest Industrial Park (350 acres), one mile north of I–220/U.S. 49 Interchange, north of Jackson in Hinds County.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 16, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 201 West Capitol Street, 310 Millsaps Building, Jackson, Mississippi 39201–2005

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 23, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21246 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 47–93]

Foreign-Trade Zone 158—Jackson, MS; Application for Subzone Status Peavey Electronics Corporation Facilities (Electronic Audio/Acoustical Products) Meridian, Mississippi, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign-Trade Zone, Inc., grantee of FTZ 158, requesting special-purpose subzone status for the electronic audio and acoustical products manufacturing facilities of the Peavey Electronics Corporation (PEC), located in the Meridian, Mississippi, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 19, 1993.

The proposed subzone would consist of PEC's nine manufacturing/warehousing facilities in the Meridian area, some 80 miles east of Jackson: Site 1 (2 acres)—engineering/manufacturing facility, 611 10th Avenue, Meridian (Lauderdale County), Mississippi; Site 2 (2 acres)—manufacturing and research facility, 14th Avenue and 20th Street, Meridian; Site 3 (19 acres)—manufacturing plant, 710 A Street, Meridian; Site 4 (7 acres)—manufacturing plant, State Highway 80 West in Morton (Scott County), Mississippi; Site 5 (4 acres)—warehouse, 200 Bonita Drive, Meridian; Site 6 (9 acres)—warehouse/repair facility, 326 State Highway 11 and 80, Meridian; Site 7 (38 acres)—manufacturing plant, Route 2 and State Highway 503, Decatur (Newton County), Mississippi, approximately 20 miles west of Meridian; Site 8 (45 acres)—two manufacturing plants and a distribution facility within the Northeast Industrial Park located six miles east of Meridian; and, Site 9 (1 acre)—manufacturing plant, 416 18th Avenue in Meridian. The facilities (1,955 employees) are used to produce a variety of electronic hi-fidelity audio and acoustical products for the U.S. market and export, including amplifiers, loudspeakers, musical instrument processors, mixers, microphones, musical instruments (guitars, keyboards), public address systems, lighting equipment, and related accessories. Components and materials purchased from abroad include: loudspeaker parts, diodes, capacitors, resistors, electric motors, musical instrument parts, and wiring harnesses (duty rate range: Free—6.6%).

Zone procedures would exempt PEC from Customs duty payments on the foreign components used in export production. On its domestic sales, PEC would be able to choose the duty rates that apply to finished electronic audio and acoustical products (5% average rate) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the company's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 16, 1993).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 310 Millsaps Building, 201 W. Capitol Street, Jackson, MS 39201

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230

Dated: August 23, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21427 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–007]

Certain High-Capacity Pagers From Japan; Determination Not To Revoke Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping duty order on certain high-capacity pagers from Japan because it continues to be of interest to an interested party.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Philip C. Marchal or Michael R. Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; (202) 482–5505.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 34116) its intent to revoke the antidumping duty order on high-capacity pagers from Japan (48 FR 37058, August 16, 1983). We invited interested parties to comment on our intent to revoke the order.

Scope of the Review

Imports covered by the order are shipments of certain high-capacity pagers from Japan. The term "high-capacity pagers" covers tone-only paging signal receivers, 3,000 or more of which can be operated in a paging system on a single radio frequency channel. Prior to January 1, 1989, the merchandise was classified under items 685.1686 and 685.7036 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8527.90.80 and 8531.80.00 of the Harmonized Tariff Schedules (HTS). TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination Not To Revoke

The Department may revoke an order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties as defined in 19 CFR 353.2(k). Because we had not received a request for an administrative review of this order for the last four consecutive annual anniversary months, we published a notice of intent to revoke pursuant to 19 CFR 353.25(d)(4)(i).

On August 14, 1992, Motorola, the petitioner, objected in writing to our intent to revoke the order. We received no further comments.

Based on Motorola's objection, the Department has concluded that the order continued to be of interest to an interested party. Therefore, we no longer intend to revoke the antidumping duty order on certain high-capacity pagers from Japan.

Dated: April 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21430 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–508–064]

Roses From Israel; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on roses from Israel. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone or Philip Pia, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1980, the Department of Commerce ("the Department") published a countervailing duty order on roses from Israel (45 FR 58516). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than thirty days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 25, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21428 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–601]

Steel Wire From New Zealand; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on steel wire from New Zealand. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT:
Anna T. Milone or Sarah Givens, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1986, the Department of Commerce ("the Department") published a countervailing duty order on steel wire from New Zealand (51 FR 31156). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than thirty days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 24, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21429 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

State University of New York, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–047. *Applicant:* State University of New York, Stony Brook, NY 11794. *Instrument:* In-Situ Large Volume Filtration System. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides programmable in situ filtration and capture of particles in water columns with a flow rate to 1200 liters of water per hour to a depth of more than 5000 m. *Advice Received From:* The National Ocean Service, July 16, 1993.

Docket Number: 93–050. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Palisades, NY 10964. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides high precision measurements of: (1) Compressional (p-wave) velocities, (2) gamma ray attenuation and (3) magnetic susceptibility. *Advice Received From:* A private research institution, July 26, 1993.

The National Ocean Service and a private research institution advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–21423 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–F

University of Illinois at Chicago; Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92–184. *Applicant:* University of Illinois at Chicago, Department of Chemistry (m/c 111), 801 W. Taylor Street, Room 4500, Chicago IL 60607-7061. *Instrument:* Excimer-pumped Dye Lasers, Models LEXtra 50 and LPD 3002. *Manufacturer:* Lambda Physik, Germany. *Date of Denial without Prejudice to Resubmission:* June 9, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–21424 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for Rhode Island and Oregon Coastal Management Programs, and Sapelo Island (Georgia), Tijuana River (California), Hudson River (New York) and Jobos Bay (Puerto Rico) National Estuarine Research Reserves (NERR). Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires a continuing review of the performance of coastal states with respect to coastal management and the operation and management of NERRs.

The States of Rhode Island and Oregon were found to be implementing and enforcing their Federally approved coastal management program, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. Tijuana River, Sapelo Island, and Jobos Bay NERRs were found to be not fully adhering to NERR System goals, to their federally approved management plans, and to the terms of their financial assistance awards. Hudson River NERR was found to be satisfactorily adhering to programmatic requirements of the NERR system.

Copies of these final evaluation findings may be obtained upon request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910 (301) 713–3087.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 27, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–21372 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 082793C]

Gulf of Mexico Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on September 13–16, 1993. The meetings will be held at the Doubletree Hotel, 300 Canal Street, New Orleans, LA; telephone: (504) 581–1300. The agenda is as follows:

Council

The Council will convene on September 15 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 12 noon: Receive public testimony on 1994 Total Allowable Catches (TACs) for Red Grouper and Red Snapper, and receive Public Testimony on Red Snapper Commercial Vessel Trip Limits for 1994;

(**Note:** Testimony cards must be turned in to staff before the start of public testimony).

From 1 p.m. to 5 p.m.: Receive the Reef Fish Management Committee report.

The Council will reconvene at 8:30 a.m. on September 16 and adjourn at 12 p.m. It will receive reports from the following Committees:

(1) 8:30 a.m. to 9:30 a.m.—Reef Fish Management Committee (continued);

(2) 9:30 a.m. to 10 a.m.—Mackerel Management Committee;

(3) 10 a.m. to 10:30 a.m.—Coral Management Committee;

(4) 10:30 a.m. to 11 a.m.—Habitat Protection Committee;

(5) 11 a.m. to 12 p.m.—Shark Operations Team report on meeting held in Silver Spring, Maryland, on July 27–28, 1993; and Enforcement reports, Director's reports, and Election of Chairman and Vice Chairman.

Committees

The Coral Management Committee and the Habitat Committee will meet on September 13 at 1 p.m. and adjourn at 5:30 p.m. The Mackerel Management Committee and the Reef Fish Management Committee will meet on September 14 at 8 a.m. and adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 27, 1993.

David S. Crestin,

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

[FR Doc. 93–21417 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 082793B]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet during the week of September 20, 1993. The Council's Advisory Panel, Scientific and Statistical Committee and Comprehensive Planning Committee will begin their meetings at 1 p.m. on September 20. The Plan Amendment Advisory Group (PAAG) is scheduled to also meet on September 20 at 8 a.m. The Council will begin its plenary session at 1 p.m. on September 21 and continue through the week until the agenda is completed. All meetings except for the PAAG Committee meeting will be held at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK; telephone: (907) 272–7411. The location of the PAAG Committee meeting will be announced at a later date.

The Council will consider and may take action on any of the following agenda items:

(1) Election of officers;

(2) Reports by the National Marine Fisheries Service (NMFS), the Alaska Department of Fish and Game, and the United States Coast Guard, the NMFS Marine Mammal Laboratory, and the Polar Research Board on a Bering Sea Ecosystems Study;

(3) Receive a status report on the implementation of the North Pacific Fisheries Research Plan and consider observer requirements for 1994;

(4) Final review of amendment proposals for inclusion in the Sablefish and Halibut Individual Fishing Quota (IFQ) Plan, and review of the final rule and implementation plan for the IFQ program;

(5) Review of the pollock Community Development Programs and consideration of recommendations for 1994–1995;

(6) Progress report and further direction to staff on alternatives for the Comprehensive Rationalization Program, and a review of a request for proposals for the Social Impact Assessment for the plan;

(7) Review of a concept paper on full utilization of species under Council jurisdiction;

(8) Final review of a management alternatives for the scallop fishery;

(9) Report on the 1993 halibut fishery, review of proposals submitted for the 1994 halibut season, and a discussion of possible caps on halibut caught by halibut charter operations;

(10) Approval of initial Stock Assessment and Fishery Evaluation reports for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries for 1994. Setting of initial groundfish and bycatch specifications for the 1994 fisheries, and bycatch rate standards for the Vessel Incentive program;

(11) Final review and approval of the following proposed amendments to the groundfish fishery management plans:

(a) Rockfish rebuilding alternatives for the Gulf of Alaska; and

(b) Exclusive registration alternatives for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries.

(12) Initial review of a plan amendment for a trawl closure around the Pribilof Islands;

(13) Final review of a regulatory amendment to allow disclosure of Prohibited Species Catch rates by vessel name;

(14) Initial review of the following proposed regulatory amendments:

(a) Directed fishing standards for 1994, and

(b) Require all processors to weigh fish;

(15) Other groundfish subjects on the agenda include:

(a) A concept paper on a salmon Vessel Incentive Program;

(b) Preliminary report on restricting trawl mesh size to 8 inches, and

(c) A report on the status of an industry-sponsored "Salmon Foundation;" and

(16) Review current tasking and give staff direction.

Other committees and workgroups may also meet during the week. All meetings are open to the public with the exception of a Council Executive session scheduled for the noon hour one day during the week. During executive sessions the Council will receive reports on litigation, international affairs, and personnel matters.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: August 27, 1993.

David S. Crestin,

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

[FR Doc. 93–21416 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 082793D]

Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team and the Advisory Subpanel will meet on the dates and at the locations listed below to continue preparation of the coastal pelagic species fishery management plan. Current work is focused on harvest formulas, allocation, bycatch and a management framework. On September 23 and October 13 the two groups will meet jointly.

Meetings in La Jolla will be in the small conference room at the National Marine Fisheries Service, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA. Meetings in Long Beach will be at the California Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

Group	Location	Time	Date
Team	La Jolla	10 a.m.	September 8.
Team/ Subpanel.	Long Beach.	10 a.m.	September 23.
Team	La Jolla	10 a.m.	September 29.
Team/ Subpanel.	Long Beach.	10 a.m.	October 13.

FOR FURTHER INFORMATION OR FOR PERSONS WISHING TO ATTEND, PLEASE CONTACT: Larry Jacobson on (619) 546–7117 or Patricia Wolf on (310) 590–5175 prior to the date listed herein to confirm that meeting dates and locations have not been changed.

Dated: August 27, 1993.

David S. Crestin,

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

[FR Doc. 93–21418 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–22–P

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRBs). The NOAA PRBs are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, initial recommendations for potential rank awards and recertification. The appointment of these members to the NOAA PRBs will be for periods of 24 months service beginning September 30, 1993.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Boards is September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Williams, Senior Executive Service Program Officer, Personnel and Civil Rights Office, Office of Administration, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRBs (NOAA officials unless otherwise identified) are set forth below:

Katharine W. Kimball, Deputy Assistant Secretary, Office of the Under Secretary

J. Michael Hall, Director, Office of Global Programs, Office of the Deputy Under Secretary

Donald Scavia, Director, NOAA Coastal Ocean Program Office, Office of the Deputy Under Secretary

Robert M. Valone, Director, Systems Program Office, Office of the Deputy Under Secretary

William H. Hooke, Deputy Chief Scientist, Office of the Chief Scientist

Robert F. Fagin, Director, Office of Administration

Donald E. Humphries, Deputy Director, Office of Administration

Martha R. Lumpkin, Director, Central Administrative Support Center, Office of Administration

Meredith J. Jones, General Counsel

Glenn A. Flittner, Director, Office of Research and Environmental Information, National Marine Fisheries Service (NMFS)

Nancy Foster, Deputy Assistant Administrator, NMFS

Morris M. Pallozzi, Director, Office of Enforcement, NMFS

Rolland A. Schmitten, Director, Northwest Region, NMFS

Andrew Robertson, Chief, Coastal Monitoring & Bioeffects Assessment Division, NOS

David L. Evans, Senior Scientist, NOS

Carol W. Beaver, Chief, Aeronautical Charting Division, NOS

Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data and Information Services (NESDIS)

P. Krishna Rao, Director, Office of Research and Applications, NESDIS

Gregory W. Withee, Deputy Assistant Administrator for Environmental Information Services, NESDIS

Richard P. Augulis, Director, Central Region, National Weather Service (NWS)

Lois J. Gajdys, Chief, Management and Budget, NWS

Eugenia Kalnay, Chief, Development Division, National Meteorological Center, NWS

Walter Telesetsky, Director, Office of Systems Operations, NWS

Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research (OAR)

Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR

Kikuro Miyakoda, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR

Alan R. Thomas, Deputy Assistant Administrator, OAR

Alexander E. MacDonald, Director, Forecast Systems Laboratories, OAR

Joseph E. Clark, Deputy Director, National Technical Information Service, Department of Commerce (DOC)

Burton Colvin, Deputy Director Academic Affairs, National Institute of Standards and Technology (NIST), DOC

Frederick T. Knickerbocker, Executive Director, Economic Affairs, DOC

Chris Kuyatt, Coordinator of Radiation, NIST, DOC
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey, Department of Interior
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Institutes of Science and Technology, DOC
Sheldon Wiederhorn, Scientific Assistant to Director, NIST, DOC
Michael A. Levitt, Assistant General Counsel for Legislation and Regulation, General Counsel, DOC

Dated: August 20, 1993.

Diana H. Josephson,

Deputy Under Secretary.

[FR Doc. 93–21310 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Readiness

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Readiness will meet in closed session on September 7, September 20, October 8, and October 26, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: August 27, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–21362 Filed 9–1–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 3, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 26, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Private School Survey (PSS)
Frequency: Biennially
Affected Public: Individuals or households; Non-profit institutions
Reporting Burden:
Responses: 30,000
Burden Hours: 15,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Private School Survey (PSS) is a national survey of private elementary and secondary schools. This data collection activity is intended to build an NCES universe frame of private schools to generate bi-annual data on the total number of private schools, teachers, and students. These data have been collected since the 1989–90 academic year.
Additional Information: An expedited review is requested in order to have sufficient time to prepare the survey for mail-out in October. Based on the results of the field test only minor changes have been made to this questionnaire. There are now eighteen (18), rather than fifteen (15), questions on the form. There is no change in burden associated with these changes. We are requesting OMB clearance by September 3, 1993.

[FR Doc. 93–21321 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 8, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 26, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: National Assessment of Educational Progress (NAEP), 1993 Field Test, 1994 Full Scale Assessment and Background Questionnaires, Mathematics, Reading, Science, U.S. History, and World Geography
Frequency: Biennially
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 468,905
Burden Hours: 539,416
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The NAEP is a congressionally mandated data collection of assessment and background information. Respondents will be students at grade 4, grade 8, and grade 12, teachers, and principals. The 1993/94 assessment will be conducted in the following subjects: Mathematics, reading, science, U.S. history, and world geography. Results of the assessments will be linked to background characteristics of the students, teachers and school.
Additional Information: An expedited review is requested in order to maintain a schedule of beginning field work in early October. Based on results of the field test, only minor changes have been made to this questionnaire. There is no change in burden associated with these changes. We are requesting OMB clearance by September 8, 1993.

[FR Doc. 93–21322 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: September 27, 1993, beginning at 9 a.m. and ending at 5 p.m.; and September 28, 1993, beginning at 8:30 a.m. and ending at 12 noon.

ADDRESSES: Bates College, the Muskie Archives, Central and Campus Avenues, in Lewiston, Maine 04240.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. Earlier this year, Congress requested the Advisory Committee to examine the President's direct lending proposal as an alternative to the existing student loan program. Congress further charged the Committee with evaluating and advising the Secretary and the Congress on the operation of the Federal Direct Student Loan and Federal Family Education Loan Programs. The Advisory Committee will meet in Lewiston, Maine on Monday, September 27, 1993, from 9 a.m. to 5 p.m., and on Tuesday, September 28, from 8:30 a.m. to 12 noon.

The proposed agenda includes (a) a discussion on budget reconciliation; (b) a direct lending update; (c) an update on the delivery system; and (d) an Advisory Committee regulatory update and planning session for the upcoming year's agenda. Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439. The registration deadline is September 17, 1993.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: August 30, 1993.

Debra L. Schweikert,

Associate Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 93–21434 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP92–182–000, et al.]

Availability of a Final Environmental Impact Statement for the Proposed FGT Phase III Expansion Project

August 27, 1993.

In the matter of Florida Gas Transmission Co., Docket Nos. CP92–182–000, CP92–182–001, CP92–182–002, CP92–182–004; Transcontinental Gas Pipe Line Corp. and Florida Gas Transmission Co., Dockets No. CP92–415–000, CP92–415–002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a final environmental impact statement (FEIS) on the more than 800 miles of natural gas pipeline facilities proposed in the above-referenced dockets.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposal.

The proposed action involves construction of pipeline, new compressor stations, and addition of compression at various existing compressor stations in Louisiana, Mississippi, Alabama, and Florida. Florida Gas Transmission Company (FGT) proposes to construct 814.4 miles of pipeline and abandon 66.8 miles of pipeline. The proposed new pipeline facilities would consist of:

- 601.0 miles of pipeline loop on FGT's existing mainline;
- 166.1 miles of new pipeline on the West Leg;
- 25.9 miles of pipeline loop on FGT's lateral systems; and
- 21.42 miles of pipeline to customer facilities.

In addition, FGT proposes to:

- Install about 39,000 horsepower (hp) of compression at three new compressor stations;
- Add 66,800 hp of additional compression at seven existing compressor stations;
- Abandon one compressor station; and
- Transfer 1,202 hp of compression from one compressor station to another.

FGT also proposes to:

- Construct 9 new meter stations and 14 new regulators; and
- Upgrade 7 existing meter stations and 1 regulator.

Additionally, FGT and Transcontinental Gas Pipe Line Corporation propose to construct a new 10,766-hp compressor station and a new regulator.

The proposed FGT Phase III Expansion Project would transport 541,117 thousand cubic feet per day (Mcfd) of natural gas in the winter season and 522,573 Mcfd of natural gas during the summer season to FGT's customers located primarily in Florida.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection in the: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, libraries, newspapers, individuals who have requested the FEIS, and other parties to this proceeding.

A limited number of copies of the FEIS are available from: Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1121.

The FEIS will be available from the National Technical Information Service (NTIS), Springfield, Virginia. Please call the NTIS at (703) 487–4780 to obtain the identification number and information on how to order additional copies.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21359 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2459–005]

West Penn Power Co.; Intent To Prepare An Environmental Assessment and Conduct Public Scoping Meetings

August 27, 1993.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the existing Lake Lynn Project No. 2459. The Lake Lynn Project is located on the Cheat River in Monongalia County, West Virginia, and Fayette County, Pennsylvania.

The FERC staff intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EA will be issued and circulated for review by all the interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

Two public scoping meetings will be conducted on Tuesday, October 5, 1993. A scoping meeting oriented toward resource agencies will be conducted from 1 p.m. to 4 p.m., at the Morgantown Public Library, 373 Spruce Street, Morgantown, West Virginia. A scoping meeting oriented toward the public will be conducted from 7 p.m. to 10 p.m., at the Cheat Lake Elementary School on Tyrone Road, in Morgantown, West Virginia.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Identify reasonable alternatives that should be evaluated in the EA; (2)

identify significant environmental issues related to the proposed project; (3) determine the depth of analysis for issues to be addressed in the EA; (4) identify resource issues that are not important and do not require detailed analysis; (5) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (6) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Lake Lynn Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Participants wishing to make oral comments at the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, until November 4, 1993.

All written correspondence should clearly show the following caption on the first page: Lake Lynn Project No. 2459.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

If you have any questions please contact Thomas Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21334 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–24–000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

August 27, 1993.

Take notice that on August 25, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective October 1, 1993:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 8

Pursuant to Order No. 472, the Commission authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1993 ACA unit surcharge approved by the Commission is $.0026 per Mcf. Equitrans states that it has converted this Mcf rate to a dekatherm (Dth) rate of $.0025 per Dth. Attached at Exhibit A to the filing is information sufficient to support this conversion.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21335 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2458 and 2572]

Great Northern Paper, Inc.; Date Change for Comments

August 27, 1993.

The Federal Energy Regulatory Commission (FERC) held scoping meetings on Wednesday, August 25, 1993, in Millinocket, Maine for the Ripogenus and Penobscot Mills Projects. Previously, in the Notice of Intent to Hold Scoping Meetings and Site Visit, the Commission indicated that September 1, 1993 would be the deadline for submitting written scoping comments. This deadline has extended to September 8, 1993. Comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show one or both of the following captions on the first page:

Penobscot Mills Project No. 2458, Maine
Ripogenus Project No. 2572, Maine

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing written comments or documents with the Commission, to serve a copy of the written comments or documents on each person whose name is on the official service list for the proceeding. See 18 CFR 4.34(b).

For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21358 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–67–000]

LG&E Power Generation, L.P.; Application for Determination of Exempt Wholesale Generator Status

August 27, 1993.

On August 24, 1993, LG&E Power Generation, L.P., 12500 Fair Lakes Circle, suite 260, Fairfax, Virginia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant will be a limited partnership engaged directly and exclusively in the business of owning a 50 MW natural gas-fired facility to be located in Southeast Virginia, and selling electric energy at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21336 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–001]

MIGC, Inc.; Motion To Place Suspended Tariff Sheets Into Effect

August 27, 1993.

Take notice that on August 24, 1993, MIGC, Inc. (MIGC), tendered for filing a motion to place into effect First Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1.

MIGC states that the subject tariff sheet, which has been renumbered as a result of the Commission acceptance of MIGC's Order No. 636 compliance filing, is to become effective September 1, 1993 pursuant to the Commission's April 2, 1993 order in the above referenced docket.

MIGC states that a copy of its motion and the accompanying tariff sheet has been served on all jurisdictional customers and interested state commissions and all persons on the Commission's official service list in Docket No. RP93–89–000.

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 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 3, 1993. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21337 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–623–000]

Montaup Electric Co.; Filing

August 27, 1993.

Take notice that on August 9, 1993, Montaup Electric Company tendered an amendment to its original filing in this docket to place a cap of $11.65 per kilowatt per year on the price that can be charged for transmission service under the formula rate appended to the contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21338 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project no. 1982 Wisconsin]

Northern States Power Co.; Intent To File an Application for a New License

August 27, 1993.

Take notice that Northern States Power Company, the existing licensee for the Holcombe Hydroelectric Project No. 1982, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1982 was issued effective July 1, 1948, and expires June 30, 1998.

The project is located on the Chippewa River in Chippewa & Rusk Counties, Wisconsin. The principal works of the Holcombe Project include a dam with a concrete gated ogee spillway section about 462 feet long, earth embankment sections about 4,200 feet long, and a powerhouse section; a reservoir with a capacity of about 46,000 acre feet; a concrete and brick powerhouse with 48,000 HP in three units; a substation and appurtenant works.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702–0008.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21339 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–174–000]

Northwest Pipeline Corp., Proposed Change in FERC Gas Tariff

August 27, 1993.

Take notice that on August 19, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A the following tariff sheet:

Second Revised Sheet No. 313

Northwest states that the purpose of this filing is to clarify the eligibility requirements pertaining to the Rate Schedule TF–1 (Small Customer).

Northwest requests any waivers of the Commission's regulations as may be required to make the tendered tariff sheet effective on April 1, 1993, the same effective date as Substitute First Revised Sheet No. 313 which is the page being replaced. In the alternative, Northwest requests an effective date of September 20, 1993, which is thirty (30) days from the date of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21340 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–679–000]

Richfield Gas Storage System; Application

August 27, 1993.

Take notice that on August 25, 1993, Richfield Gas Storage System (Richfield), 4200 E. Skelly Drive, suite 560, Tulsa, Oklahoma 74135, filed in Docket No. CT93–679–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Richfield to engage in any of the activities specified in subpart F of part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Richfield is a "natural gas company" within the meaning of the NGA and as determined by the Commission in Docket No. CP92–285–000. It is explained that Richfield owns and operates an underground interstate natural gas storage field and related pipeline facilities in Kansas. Richfield asserts that it has no outstanding budget-type certificates and no currently effective sales rate schedules. Richfield states that it does have currently effective storage rate schedules, providing firm storage service under Rate Schedule FSS–1 and interruptible storage service under Rate Schedule ISS–1.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 7, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval to abandon are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Richfield to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21343 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–104–000]

Southern California Gas Co.; Amendment to Filing

August 27, 1993.

On August 20, 1993, Southern California Gas Company tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by September 15, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21333 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–66–000]

Tenneco Power Generation Co., Application for Determination of Exempt Wholesale Generator Status

August 27, 1993.

On August 25, 1993, Tenneco Power Generation Company ("Tenneco Power") filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Tenneco Power is a Delaware corporation that proposes to construct, own and operate a proposed natural gas-fired, simple cycle, combustion turbine power plant in Clark County, Nevada.

Any person desiring to be heard concerning the application should file a motion to intervene or comments with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21344 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–65–000]

UC Operating Services; Application for Determination of Exempt Wholesale Generator Status

August 27, 1993.

On August 23, 1993, UC Operating Services ("UCOS"), a California general partnership with its principal place of business at 9881 Broken Land Parkway, Columbia, Maryland 21046, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale

generator status pursuant to part 365 of the Commission's regulations.

UCOS intends to provide operating services for a pulvurized coal-fired cogeneration facility with a maximum net power production capacity of between approximately 165 MW (summer) and 167 MW (winter). All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on UCOS. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21345 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–49–000]

Williston Basin and Interstate Pipeline Co.; Annual Charge Adjustment Filing

August 27, 1993.

Take notice that on August 25, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 1–A, 1–B and 2, the following revised tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Volume No. 1

Fifty-first Revised Sheet No. 10

Original Volume No. 1–A

Forty-third Revised Sheet No. 11
Forty-eighth Revised Sheet No. 12

Original Volume No. 1–B

Thirty-ninth Revised Sheet No. 10
Thirty-ninth Revised Sheet No. 11

Original Volume No. 2

Forty-ninth Revised Sheet No. 10
Forty-fifth Revised Sheet No. 11B

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR part 382 and the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1, section 30; Original Volume No. 1–A, section 27; and Original Volume No. 1–B, section 25. Williston Basin states that the filing incorporates the Commission approved ACA surcharge of .260 cents per Mcf (.247 cents per dkt on the Williston Basin system), an increase of .03 cents per Mcf from the current amount as authorized by the Commission.

Williston Basin states that copies of the filing were served upon the company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21346 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–39–013]

Wyoming Interstate Co., Ltd.; Compliance Filing

August 27, 1993.

Take notice that on August 6, 1993, Wyoming Interstate Company, Ltd. (WIC) tendered for filing in compliance with the Commission's July 7, 1993 order its revise plan for flow through the excess deferred income taxes (DIT) through its commodity rate. WIC also filed its statement of the amount of its excess DIT on a before tax (gross up) basis.

WIC states that Attachment 1 to the filing reflects the amount of the excess DIT on an after tax and before tax (gross up) basis.

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 September 3, 1993. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21347 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4703–7]

EPA Region III Comprehensive Environmental Response, Compensation and Liability Act Program; Transfer and Disclosure of Information to Contractors and Subcontractors

SUMMARY: EPA Region III has authorized certain contractors and subcontractors access to information which has been submitted to EPA under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Contractor access to this information is immediate. Comments concerning CBI access will be accepted on or before October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Janowiak (3HW43), Chief, Contracts and State Oversight Section, EPA Region III (215–597–8573).

SUPPLEMENTARY INFORMATION: The contractors and subcontractors listed below provide certain services to EPA Region III, including: (1) Information management support services for the operation of a file room in Philadelphia, Pennsylvania; (2) compilation and organization of documents and information; and (3) review and analysis of documents and information. In performing these tasks, employees of the contractors and subcontractors listed below have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which these contractors and subcontractors have access potentially include all

documents submitted under the Comprehensive Environmental Response, Compensation and Liability Act. Some of these documents may contain information claimed as confidential business information ("CBI").

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that these contractors and subcontractors require access to CBI to perform the work required under the contracts and subcontracts. These regulations provide for five days notice before contractors are given CBI. Such notice had not previously been given with respect to prior disclosure of these documents; this notice is intended to correct that oversight, as well as to provide notice of all future disclosures of such information by EPA Region III to the contractors listed below.

All of the listed contractors and subcontractors are required by contract to protect confidential information. When the contractors' and subcontractors' need for the documents is completed, the contractors and subcontractors will return them to EPA. The contractors and subcontractors to which this notice applies are as follows:

Contractor/subcontractor	Contract No.
Black and Veatch Waste Science and Technology Corporation	68–W8–0091
(ARCS contractor, performing site assessments, remedial investigations, feasibility studies, remedial design, remedial actions and oversight of potentially responsible party actions) Subcontractor: Earth Technology Corp.	
CDM-Federal Programs Corporation	68–W9–0004
(Technical Enforcement Support (TES) contractor, preforming PRP searches, negotiation support, litigation support, PRP oversight support services for RI/FS, removal, remedial design, remedial action, risk assessment, analytical activities, community relations, expert witnesses, cost recovery, technical document review and management and project management support activities) Subcontractors: CDM, Inc., Techlaw, Inc., Booz-Allen and Hamilton, Inc., SAIC, Versar, A.T. Kearney, The Cadmus Group, Labat Anderson, Inc., Viar and Company, Lee Wan and Associates, Inc., Tetra Tech, Inc.	
CH2M Hill	68–W8–0090
(ARCS contractor, as described above)	
Dynamic Corporation	68–W9–0005
(TES contractor, as described above) Subcontractors: PRC Environmental Management, Inc., Black and Veatch Waste Science and Technology Corp., Resource Applications, Inc., PEI Associates, Inc.	
Ebasco	68–01–7250
(Remedial Engineering Management (REM) contractor, performing remedial investigations and feasibility studies, engineering design and construction of remedial actions, community relations activities, and support of enforcement actions) Subcontractors: Aepco, Inc., Aquatec, Inc., ICF Corp., E.C. Jordan, NUS, Environmental Science and Engineering, Inc., Weston Geophysical	
Ecology and Environment, Inc	68–W8–0085
(ARCS contractor, as described above)	
Environmental Technology, Inc	68–S2–3002
(Emergency Response Cleanup Services (ERCS) contractor, conducting emergency response and removal actions) Subcontractors: Guardian Environmental Services, Inc., Petroclean, Inc., Gilarde Environmental Services, Inc.	
Halliburton NUS Corporation	68–W8–0037
(Halliburton NUS Environmental Corporation) (ARCS contractor, as described above) Subcontractor: Gannett Fleming	
Roy F. Weston, Inc.	68W0–0036
(Technical Assistance Team (TAT) contractor, supporting the removal and prevention program, including inspections, response monitoring, enforcement support, training and analytical services) Subcontractors: Foster Wheeler, Resource Application, C.C. Johnson	
TechLaw, Inc	68–W0–0001
(Regional Evidence Audit contractor, evaluating chemical information related to sites, and other information concerning liability)	
Tetra Tech, Inc	68–W8–0092
(ARCS contractor, as described above)	

Dated: August 6, 1993.

Abraham Ferdas,

Acting Director, Hazardous Waste Management Division, EPA Region III.

[FR Doc. 93–21402 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4702–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 4, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resource Management

Title: Application for Federal Construction (ICR No. 874.05; OMB No. 2030–0018).

Abstract: This ICR is an extension of an existing information collection that authorizes the use of the application form used by States and municipalities to apply for financial assistance to build treatment works. The authority is provided under EPA's Grants for Wastewater Treatment Works, at Title II of the Clean Water Act, and in accordance with 40 CFR parts 31 and 35. The information is used by EPA or State officials to determine the applicant's eligibility for funding and the ability to perform the tasks required in completing the project.

Under this ICR, applicants/recipients must perform information collection activities that include providing: (1) A certification establishing the project's priority for funding and an indication that there has been adequate public participation; (2) standard assurances for grant eligibility; (3) budget information for both the initial request and for subsequent amendments; and (4) a summary of all other regulations affecting the project. Applicants must also complete Standard Form 424, a form used across the federal government that requires the applicant to provide basic information (financial, application type, identification) common to all grant applicants. Applicants must maintain records related to the construction grant application for a period of 3 years.

Burden Statement: Public reporting burden for respondents subject to this collection of information is estimated to average 20.5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Annual recordkeeping burden is estimated to average 1 hour per respondent.

Respondents: State or local governments.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,075 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this

collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 26, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–21400 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4703–6]

Workshop on Ecological Risk Assessment Issues for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a U.S. Environmental Protection Agency (EPA) workshop to examine the utility for future ecological risk assessments of data and methods presented in a recent EPA report. This report, entitled Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) Risks to Aquatic Life and Associated Wildlife (EPA/600/R–93/055), released in March, 1993, provides data and describes exposure, bioaccumulation, and toxic effects relationships for TCDD.

DATES: The workshop will begin on Tuesday, September 14, 1993, at 8:30 a.m. and end on Wednesday, September 15, 1993, at 4 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the Radisson Hotel Metrodome, 615 Washington Avenue SE., Minneapolis, MN.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at 617/674–7374 or contact Helen Murray, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts, 02173, Tel: 617/674–7307. Space is limited.

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency (RD–672), 401 M Street SW., Washington, DC, 20460, Telephone (202) 260–6743.

SUPPLEMENTARY INFORMATION: The Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) Risks to Aquatic Life and Associated Wildlife (Interim Report), released in March, 1993, compiled and critically reviewed current scientific literature concerning toxicity and exposure data for TCDD-related effects on aquatic and wildlife species. The report is one aspect of a larger EPA scientific assessment of risks to human health and the environment associated with exposure to TCDD.

At the workshop, a peer panel will discuss use of data and methods in the Interim Report for ecological risk assessments and will identify major scientific uncertainties and related research needs.

As announced on April 29, 1993 (58 FR 25987), single copies of the Interim Report can be obtained from the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: 513/569–7562. Please give your name, mailing address, and EPA document number EPA/600/R–93/055.

Dated: August 24, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–21401 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

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, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. 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: 3060–0394.

Title: Section 1.420, Additional procedures in proceedings for amendment of FM, TV or Air-Ground Table of Allotments.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 30 responses; 1.5 hours average burden per response; 45 hours total annual burden.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that is has paid no consideration to the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

OMB Number: 3060–0452.

Title: Section 73.3589, Threats to file petitions to deny or informal objections.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 15 responses; 1 hour average burden per response; 15 hours total annual burden per response.

Needs and Uses: Section 73.3589 requires an applicant or licensee to file with the FCC a copy of any written agreement related to the dismissal or withdrawal of a threat to file a petition to deny or informal objection and an affidavit certifying that neither the would-be petitioner nor any person or organization related to the would-be petitioner has not or will not receive any consideration in excess of legitimate and prudent expenses incurred in threatening to file. The data is used to ensure that a threat to file a petition to deny or informal objection was made under appropriate circumstances and

not to extract payments in excess of legitimate and prudent expenses.

OMB Number: 3060–0423.

Title: Section 73.3588, Dismissal of petitions to deny or withdrawal of informal objections.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 80 responses; 4.25 hours average burden per response; 340 hours total annual burden per response.

Needs and Uses: Section 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that a petition to deny or informal objection was filed under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21315 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1993–21]

Filing Dates for the Michigan Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Michigan has scheduled special elections on November 2, 1993, and December 7, 1993, in the Third Congressional District to fill the seat of the late Representative Paul Henry.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report on October 21, 1993. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on December 7, 1993, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report on November 26, 1993, and a Post-General Report on January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary and Special General Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-Primary Report on October 21, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through October 13, 1993; a 12-day Pre-General Election Report on November 26, 1993, with coverage dates from October 14, 1993, through November 17, 1993; and a consolidated 30-day Post-General and Year-End Report on January 10, 1994, with coverage dates from November 18, 1993, through December 31, 1993.

All principal campaign committees of candidates in the Special Primary Election only and all other political committees not filing monthly which support candidates in the Special Primary Election, but not in the Special General Election, shall file a 12-day Pre-Primary Report on October 21, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through October 13, 1993; and a Year-End Report on January 31, 1994, with coverage dates from October 14, 1993, through December 31, 1993.

All political committees not filing monthly which support candidates in the Special General only shall file a 12-day Pre-General Election Report on November 26, 1993, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through November 17, 1993; and a consolidated 30-day Post-General and Year-End Report on January 10, 1994, with coverage dates from November 18, 1993, through December 31, 1993.

CALENDAR OF REPORTING DATES FOR MICHIGAN SPECIAL ELECTIONS

Report	Period Covered	Reg./cert. mailing date*	Filing date
I. All committees, except monthly filers, involved in the Special Primary (11/02) and Special General (12/07) must file			
Pre-Primary	**07/01/93–10/13/93	10/18/93	10/21/93
Pre-General	10/14/93–11/17/93	11/22/93	11/26/93
Post-General and Year-End***	11/18/93–12/31/93	01/10/94	01/10/94
II. All committees, except monthly filers, involved in the Special Primary (11/02) only must file			
Pre-Primary	**07/01/93–10/13/93	10/18/93	10/21/93
Year-End	10/14/93–12/31/93	01/31/94	01/31/94
III. All committees, except monthly filers, involved in the Special General (12/07) only must file			
Pre-General	**07/01/93–11/17/93	11/22/93	11/26/93
Post-General and Year-End***	11/18/93–12/31/93	01/10/94	01/10/94

*Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

**The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

***The consolidated Post-General and Year-End Report is due by 01/10/94. Committees that wish to assert their legal rights to file the Year-End Report by 1/31/94 must file two separate reports: the Post-General Report by 1/06/94; and the Year-End Report by 1/31/94, which will cover four days (12/28–12/32).

Dated: August 27, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–21327 Filed 9–1–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following area among those area determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993: Cook County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21409 Filed 9–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21410 Filed 9–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993: Divide and Williams Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21411 Filed 9–1–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street NW., room 900, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 580

FMC requests extension of clearance for the Commission's regulation to enforce the tariff filing provisions of section 8 of the Shipping Act of 1984. The rule requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, fares, and charges for transportation between U.S. and foreign ports and between points on any through route which is established.

For approximately 2400 respondents, the Commission estimates 776,620 annual responses and 270,730 annual manhours. Total estimated annual cost to the Government is $701,700; estimated annual cost to the public is $4,975,314.

Joseph C. Polking,

Secretary.

[FR Doc. 93–21360 Filed 9–1–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P57–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing

In the matter of Petition No. P57–93, Container Development Group Corp.; Petition No. P58–93, D.X.I. Inc. on Behalf of Trans-Atlantic American Flag Liner Operators

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from ATFI filing deadlines.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than September 9, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P57–93—Mr. Vaughan Hedges, President, Container Development Group Corporation, 711 E. Wardlow Road, Suite 204, Long Beach, California 90807

P58–93—Ms. Mary K. DeVitis, Manager, Tariff Conversion, D.X.I. Incorporated, 200 Hightower Blvd., suite 202, Pittsburgh, PA 15205.

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–21361 Filed 9–1–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Advisory Committee Meeting on Head Start Quality and Expansion

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, the Federal Advisory Committee Act, that the Advisory Committee on Head Start Quality and Expansion will hold its second meeting on Monday, September 20, 1993, from 9 a.m. to 5 p.m., and Tuesday, September 21, 1993, from 9 a.m. to 1 p.m. The meeting will be held at the Madison Hotel, 1177 15th Street NW., Washington, DC 20005.

The meeting shall be open to the public. The proposed agenda will include a discussion of all subcommittee reports and recommendations.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 370 L'Enfant Promenade SW., Aerospace Building, suite 600, Washington, DC 20447.

If a sign language interpreter is needed, contact David Siegel at the address and telephone below.

FOR FURTHER INFORMATION CONTACT: David Siegel, 7th floor, Aerospace Building, 370 L'Enfant Promenade SW., Washington, DC 20047 (202) 401–9215.

Dated: August 27, 1993.

Ann Rosewater,

Deputy Assistant Secretary for Policy and External Affairs.

[FR Doc. 93–21364 Filed 9–1–93; 8:45 am]

BILLING CODE 4184–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, August 6, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Supplemental Security Income (SSI) Wage Reports—0960–NEW. The information on forms SSA–425, 426 and 427 will be used by the Social Security Administration to determine if recipient reporting can improve payment accuracy and reduce the administrative costs associated with wage verification.

Number of Respondents: 3,200
Frequency of Response: 12, 6 and 4 times per year
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 5,325 hours

2. Statement of Marital Relationship (By One of the Parties)— 0960–0038. The information on form SSA–754 is used by the Social Security Administration to prove or disprove the existence of a common-law marriage. The respondents are applicants for benefits who allege such a marriage.

Number of Respondents: 30,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 15,000 hours

3. Black Lung Student's Statement Regarding Resumption of School Attendance and Report of Black Lung Student Beneficiary at End of School Year—0960–0314 and 0960–0322. The information on forms SSA–2602 and SSA–2613 is used by the Social Security Administration to determine whether or not a student beneficiary will resume (or has resumed) full-time school attendance at an approved educational institution. If so, he or she will be continuously entitled to benefits. The respondents are children of disabled or deceased coal miners and officials of the schools they attend.

Number of Respondents: 8,000
Frequency of Response: 2 times per year
Average Burden Per Response: (2602)=5 minutes; (2613)=7.5 minutes
Estimated Annual Burden: 1,667 hours

4. Domestic Service Questionnaire—0960–0047. The information on form SSA–7155 is used to determine if the domestic services performed by an individual in the home of a son or daughter are covered employment under the Social Security Act. The respondents are sons or daughters who employ claimants for benefits as domestics.

Number of Respondents: 12,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 6,000 hours

5. Final Regulation Concerning Review Procedures Under the Coal Industry Retiree Health Benefit Act of 1992—0960–NEW. The information provided as a result of this regulation will be used by the Social Security Administration (SSA) to reexamine its determination concerning the assignment of retired coal miners to an existing coal mine operator. The respondents will be coal mine operators who appeal that determination and submit evidence supporting their appeal.

SSA has requested emergency processing by the Office of Management and Budget (OMB) and expects to have OMB approval by 9/15/93.

Number of Respondents: 4,000
Frequency of Response: 1
Average Burden Per Response: 1 hour
Estimated Annual Burden: 4,000 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 27, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–21367 Filed 9–1–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3663]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below

have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 26, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Construction Report

Office: Public and Indian Housing

Description of the Need for the Information and its Proposed Use: This information enables the Department to identify problem areas and/or inadequacies of a public housing project under construction so that corrective action can be taken in a timely manner.

Form Number: HUD–5378

Respondents: State or Local Government and Non-Profit Institutions

Frequency of Submission: Semimonthly

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5378	200		24		.25		1,200
Recordkeeping	4,000		1		.04		192

Total Estimated Burden Hours: 1,392

Status: Reinstatement

Contact: William Thorson, HUD, (202) 708–4703, Angela Antonelli, OMB, (202) 395–6880

Dated: August 26, 1993

Proposal: Mortgagee Review Board

Office: Housing

Description of the Need for the Information and its Proposed Use: Section 202(c) of the HUD Reform Act of 1989 established within the Department a Mortgagee Review Board for the purpose of imposing administrative sanctions on HUD-approved mortgagees that violate the Department's requirements in the origination and servicing of HUD–FHA insured mortgages.

Form Number: None

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	70		1		92.5		6,472

Total Estimated Burden Hours: 6,472

Status: Extension

Contact: Andrew Zirneklis, HUD, (202) 708–1824, Angela Antonelli, OMB, (202) 395–6880

Dated: August 25, 1993

Proposal: Contract and Subcontract Reporting for Housing's Multifamily Program

Office: Housing

Description of the Need for the Information and its Proposed Use: The collection of data on minority business enterprise (MBE) participation in HUD programs is a Departmental responsibility and responds to Executive Orders 11625 and 12432. This information is vital for monitoring progress toward accomplishing MBE goal.

Form Number: HUD–2516

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: Semi-Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–2516	733		2		1		1,466

Total Estimated Burden Hours: 1,466
Status: Reinstatement
Contact: Sandra Foy, HUD, (202) 708–4466, Angela Antonelli, OMB, (202) 395–6880
Dated: August 25, 1993

Proposal: Electricity, Gas, Water, and Sewage Disposal Data
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The forms will be used by PHAs for compiling, by housing project and utility service, utility consumptions and costs for a calendar year. HUD will use the information in reviewing PHAs utility operation and in determining if PHAs are controlling utility costs.
Form Number: HUD–51466A, 51466B, and 51466C
Respondents: State or Local Governments, and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual reporting	3,000		8		.5		12,000

Total Estimated Burden Hours: 12,000
Status: Reinstatement
Contact: Charles Ashmore, HUD, (202) 708–0840, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993

Proposal: General Conditions
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: The form is required for construction contracts awarded by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs). The form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, HUD program regulations on grantee procurement, and HUD Handbooks implementing those regulations. The form is used by PHAs and IHAs in solicitations to provide necessary contract clauses.
Form Number: HUD–5370
Respondents: State or Local Governments
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,895		1		1		3,895

Total Estimated Burden Hours: 3,895
Status: Extension
Contact: Williams Thorson, HUD, (202) 708–4703, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993

Proposal: Contract and Subcontract Activity Report for Public and Indian Housing
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: Executive Orders 11625 and 12432 establish the Department's responsibility for the collection of data on Minority Business Enterprise participation in HUD programs vital to program monitoring. The affected public includes PHAs/IHAs, contractors, and minority businesses.
Form Number: HUD–2516
Respondents: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations
Frequency of Submission: Semi-annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Public Housing Authorities	3,230		2		1		6,460
Indian Housing Authorities	170		2		1		340

Total Estimated Burden Hours: 6,800
Status: Extension
Contact: Walter Preysnar, HUD, (202) 708–0846, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993

Proposal: Request for financial information
Office: Housing
Description of the Need for the Information and its Proposed Use: The information provided on Form HUD–92068F will be used in evaluating a mortgagor's eligibility for assistance under the Department's mortgage assistance program.
Form Number: HUD–92068F
Respondents: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92068F	100,000		1		.5		50,000

Total Estimated Burden Hours: 50,000
Status: Extension
Contact: David Dwyer, HUD, (202) 708–3664, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993.

Proposal: Request for Credit Approval of Substitute Mortgagor
Office: Housing
Description of the Need for the Information and its Proposed Use: Form HUD–92210 is an application form to approve the credit of a substitute mortgagor who desires to assume an insured mortgage loan and a notification form to document the file that the substitute mortgage is financially accepted.
Form Number: HUD–92210
Respondents: Individuals or Households
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92210	1,000		10		1		10,000

Total Estimated Burden Hours: 10,000
Status: Extension
Contact: Charlene Weaver, HUD, (202) 708–1672, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993.

Proposal: Format: Memorandum of Acceptance for Occupancy (MAO)
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The Format will be used by a public housing agency to formalize a determination that the contractor has completed all or portions of a project to the point that the completed portions may provide satisfactory housing with safe access and essential utilities in place.
Form Number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	50		2		.50		50
Recordkeeping	100		1		.25		25

Total Estimated Burden Hours: 75
Status: Reinstatement
Contact: William C. Thorson, HUD, (202) 708–4703, Angela Antonelli, OMB, (202) 395–6880
Dated: August 18, 1993

Proposal: Mortgage Insurance—Single Family Claims Without Conveyance of Title
Office: Housing
Description of the Need for the Information and its Proposed Use: Section 426 of the Housing and Urban/Rural Recovery Act of 1983 allows mortgagees to submit claims for insurance benefits without conveying the title to the Secretary of HUD.
Form Number: HUD–91022
Respondents: Businesses or Other For-Profit
Frequency of Submission: On occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–91022	750		4		4.14		3,100

Total Estimated Burden Hours: 3,100
Status: Extension
Contact: Dorothy Butler, HUD, (202) 755–7330, Angela Antonelli, OMB, (202) 395–6880
Dated: August 10, 1993

Proposal: Management Reviews of Multifamily Projects
Office: Housing
Description of the Need for the Information and its Proposed Use: Form HUD–9834 will be used when conducting on-site reviews of project operations to evaluate the quality of project management, determine the causes of project problems, devise corrective actions to safeguard the Department's financial interest, and ensure decent, safe, and sanitary housing for tenants.
Form Number: HUD–9834
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Management review questionnaire	1,120		1		4		4,480

Total Estimated Burden Hours: 4,480
Status: Extension
Contact: James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880
Dated: August 10, 1993

Proposal: American Housing Survey—1994 Metropolitan Sample
Office: Policy Development and Research
Description of the Need for the Information and its Proposed Use: The 1994 AHS–MS is a longitudinal study that collects current information on the quality, availability, and cost of housing in eleven selected metropolitan areas. The study also provides information on demographic and other characteristics of the occupants. Federal and local government agencies use AHS data to evaluate housing issues.
Form Number: AHS–61, 62, 63, 66, 67, 68, and 590
Respondents: Individuals or Households
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	45,000		1		.54		24,435

Total Estimated Burden Hours: 24,435
Status: Revision
Contact: Duane T. McGough, HUD, (202) 708–1060, Daniel Weinberg, Census, (301) 763–8550, Angela Antonelli, OMB, (202) 395–6880
Dated: August 6, 1993

Proposal: Performance Funding System Data Collection Forms
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: These forms are used by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to calculate the annual operation subsidy eligibility under the Performance Funding System. They are used by the Department to evaluate the PHAs/IHAs' annual operating budget.
Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B, and 52723
Respondents: State or Local Governments
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collections	3,119		Varies		Varies		23,190

Total Estimated Burden Hours: 23,190
Status: Reinstatement
Contact: Joan DeWitt, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880
Dated: August 6, 1993

Proposal: Housing Owner's Certification and Application for Tenant Assistance Payments, Schedule of Tenant Assistance Payments Due, Schedule of Section 8 Special Claims, Special Claims Worksheet
Office: Housing
Description of the Need for the Information and its Proposed Use: These forms are used by owners to request monthly housing assistance payments for eligible families, to limit the number of section 8 units to those families whose incomes are less than 50 percent of the area median, and to restrict admission of ineligible tenants.
Form Number: HUD–52670, HUD–52670A, and HUD–52671A thru D
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of Submission: Monthly
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	352,045		1		.452		158,124

Total Estimated Burden Hours: 159,124
Status: Extension
Contact: James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880
Dated: August 6, 1993

[FR Doc. 93–21350 Filed 9–1–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3664]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 25, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Floodplain Management and Protection of Wetlands (FR–865)
Office: Community Planning and Development
Description of the Need for the Information and Its Proposed Use: 24 CFR part 55 prescribes decisionmaking procedures that applicants and grantees in certain programs must comply with before HUD assistance can be used for projects that may effect floodplains and wetlands. Records must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,200		1		.40		1,280

Total Estimated Burden Hours: 1,280
Status: New
Contact: Truman Goins, HUD, (202) 708–2894, Angela Antonelli, OMB, (202) 395–6880

Dated: August 25, 1993.

[FR Doc. 93–21351 Filed 9–1–93; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–03–4120–03; COC 53560]

Coal Lease Offering By Sealed Bid; Routt County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11 a.m., Thursday, October 7, 1993. Sealed bids must be submitted no later than 10 a.m., Thursday, October 7, 1993.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam in the following lands:

Sixth Principal Meridan

T. 5 N., R. 86 W.,
Sec. 31, lots 1, 2, W½NE¼, and E½NW¼;
T. 5 N., R. 87 W.,
Sec. 36, lots 1, 2, W½NE¼, and NW¼.

The land described contains 544.08 acres, more or less.

Total recoverable reserves are estimated to be 3,584,000 tons. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received bases is as follows:

Btu	11,213 Btu/lb.
Moisture	9.52%
Sulfur Content	0.44%
Ash Content	9.94%

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an

annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR part 206.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: August 24, 1993.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 93–21318 Filed 9–1–93; 8:45 am]

BILLING CODE 4310–JB–M

[ID–942–03–4730–12]

Filing of Plats of Survey; Idaho

The official plat of the following described land was to be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. September 3, 1993. The official filing of this plat is hereby stayed pending final resolution of a protest of the survey.

The plat, representing the dependent resurvey of portions of the west boundary, subdivisional lines, and meanders of the right and left banks of the Salmon River, the subdivision of section 7, and the survey of the meanders of left bank of the Salmon River, T. 20 N., R. 22 E., Boise Meridian, Idaho, Group No. 811, was accepted, July 23, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 23, 1993.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–21323 Filed 9–1–93; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

General Management Plan, Cabrillo National Monument, California; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Cabrillo National Monument, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: The GMP will replace the monument's Master Plan completed in 1976. The purpose of the GMP will be to state the management philosophy for the monument and provide strategies for addressing major issues facing the monument consistent with management objectives. Two types of strategies will be presented in the GMP: (1) Those required to properly manage cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Cabrillo National Monument should address these, along with any questions, to the Superintendent, Cabrillo National Monument, P.O. Box 6670, San Diego, CA 92166 (telephone 619–557–5450). Also, public scoping sessions will be held at the park auditorium on October 19, 1993, from 1 to 4 p.m., and on October 21, 1993, at 7 to 9 p.m. All comments on the scoping of the proposed GMP/EIS should be received no later than October 31, 1993.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review in summer, 1994, and the final GMP/EIS and Record of Decision completed approximately one year later.

Dated: August 24, 1993.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 93–21412 Filed 9–1–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–355 (Preliminary) and Investigations Nos. 731–TA–659 and 660 (Preliminary)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary countervailing duty investigation and preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–355 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and preliminary antidumping investigations Nos. 731–TA–659 and 660 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of alleged subsidized imports from Italy or alleged less than fair value imports from Italy and Japan of grain-oriented silicon electrical steel, provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States. The Commission must complete preliminary antidumping and countervailing duty investigations in 45 days, or in this case by October 12, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed

on August 26, 1993, by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA, Armco, Inc., Butler, PA, the Butler Armco Independent Union, Butler, PA, the United Steelworkers of America, Pittsburgh, PA, and the Zanesville Armco Independent Union, Zanesville, OH.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 16, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than September 14, 1993 to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 21, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21352 Filed 9–1–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–348

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of Notice of Commission determination not to review an initial determination granting a joint motion to terminate the investigation as to one respondent on the basis of a consent order agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the investigation with respect to respondent Innovative Sport Systems, Inc. (Innovative) on the basis of a consent order agreement.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public 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.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On July 16, 1993, complainant Rollerblade, Inc. and respondent Innovative jointly moved for the termination of the investigation with respect to Innovative on the basis of a consent order agreement (Motion No. 348–23). On July 23, 1993, the Commission investigative attorney filed a response in support of the motion. On July 27, 1993, the ALJ issued an ID (Order No. 19) granting Motion No. 348–23 and terminating the investigation with respect to Innovative. No petitions for review, or agency or public comments were received.

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(h) (19 CFR 210.53(h)).

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21348 Filed 9–1–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32327]

Dennis Washington and Washington Corporations—Reacquisition and Control Exemption—Westran, Inc.; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 Dennis Washington's and Washington Corporations' (WCorpII) reacquisition of a controlling interest in Westran, Inc. (WT), from a voting trust. Upon completion of the transaction, Mr. Washington would be in control of two carriers, WT and Montana Rail Link, Inc. (MRL). The Commission exempted the common control of WT and MRL, by WCorpII's predecessor, also named Washington Corporations, in Finance Docket No. 31412, *Washington Corporations—Control Exemption—Western Transport Crane and Rigging, Inc. and Montana Rail Link, Inc.* (not printed), served August 24, 1989. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on October 1, 1993. Petitions to stay must be filed by September 13, 1993, and petitions to reopen must be filed by September 21, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32327 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Adam M. Mycyk, Weiner, Brodsky, Sidman & Kidder, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: August 25, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–21543 Filed 8–31–93; 10:36 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(i) and with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(D)(2), notice is hereby given that a proposed consent order in *United States* v. *Accra Pac, Inc., and Kenneth R. Everett and Diana Lee Power, in their capacity as personal co-representatives of the Estate of Warner Baker,* Civil Action No. H89–0113, has been lodged with the United States District Court for the Northern District of Indiana on August 23, 1993.

The Consent Decree resolves the claims against defendants under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* The proposed consent order provides for remedial action by defendants of contaminated soil and groundwater at the Accra Pac site, 2600 Industrial Parkway, Elkhart, Indiana, the payment of defendants of $250,000 for past response costs of the United States, and the payment by the Baker Estate of a $50,000 penalty for failure to comply with an Administrative Order of the U.S. Environmental Protection Agency.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Accra Pac, Inc., et al.,* D.J. Ref. 90–11–3–412.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Indiana, 204 S. Main Street, South Bend, Indiana 46601, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $21.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–21324 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Open Software Foundation, Inc.

Notice is hereby given that, on August 2, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: Universitat Konstanz, Konstanz, GERMANY; Johns Hopkins University, Laurel, MD; ESIGETEL, Avon, FRANCE; Pennsylvania State University, University Park, PA; The University of Western Ontario, London, Ontario, CANADA; Ford Motor Company, Allen Park, MI; Enabling Technologies Group, Inc., Atlanta, GA; University of Florida, Gainesville, FL; University of Wisconsin, Madison, Madison, WI; Mirrors International, Inc., Taipei, TAIWAN; SingaLab Pte. Ltd., Chadwick, SINGAPORE; Purdue University, West Lafayette, IN; Phillips Petroleum Company, Bartlesville, OK; Open Environment Corporation, Cambridge, MA; Konkuk University, Seoul, KOREA; Technion, Haifa, ISRAEL; Loral Corporation, San Jose, CA; NetLabs, Inc., Los Altos, CA; and the University of California, San Diego, La Jolla, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") 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 September 7, 1988, (53 FR 34594).

The last notification was filed with the Department on May 3, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 27, 1993 (58 FR 30815).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–21325 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–01–M

Bureau of Justice Assistance

FY 1993 Discretionary Program Application Kit—Police Hiring Supplement Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Department of Justice.

ACTION: Public announcement of the availability of the Application Kit for Fiscal Year 1993 Discretionary Grants Program—Police Hiring Supplement Program. Awards will be made by the Bureau of Justice Assistance pursuant to the Anti-Drug Abuse Act of 1988.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this Notice to inform interested parties of the availability of the FY 1993 Discretionary Grant Program Application Kit for the Police Hiring Supplement Program. The following is a reprint of the sections of the Application Kit which describe the program and application requirements. A description of administrative requirements and copies of the application forms have not been reprinted in this notice, but are contained in the Application Kit.

Overview

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA), announces a new competitive grant program, the program requirements, and administrative guidance for jurisdictions eligible to apply for grants under this program. The Police Hiring Supplement Program is hereinafter referred to as the Program.

The Program will make direct grants to law enforcement jurisdictions to hire and/or rehire additional sworn law enforcement officers as part of an overall plan or strategy to address crime and related problems through community policing. An applicant's plan should reflect its community's unique needs and be responsive to local circumstances. In general, community policing is designed to forge effective crime-fighting partnerships between law enforcement and the community. These partnerships, using a problem-oriented approach, can result in innovative and tailored strategies for preventing and controlling crime. As part of their community policing efforts, communities have used various strategies to address crime problems, including multi-disciplinary crime prevention teams, public education programs, neighborhood resource centers, and foot patrols.

A total of $150 million is available for these grants, beginning in Fiscal Year 1993. Fifty percent of the funds ($75 million) will be awarded to applicants serving jurisdictions with populations of 150,000 and above. Fifty percent of the funds ($75 million) will be awarded to applicants serving jurisdictions with populations of less than 150,000. These funds may be used to help pay salaries and fringe benefits of newly sworn officers, excluding overtime, for a 3-year period. Funding will commence at the time, and not until, a hired or rehired officer is sworn in. The deployment of new hires and the selection of the officers to implement the individual projects funded under this Program will be at the discretion of the local jurisdiction.

Program Goals and Objectives

The goals of the Program are to:

- Increase the number of sworn law enforcement officers serving areas where they are needed most.
- Improve the long-term ability of law enforcement agencies to engage in community policing by deploying additional sworn law enforcement officers.
- Improve public safety through innovative crime prevention, including community policing.

The objectives are to:

- Hire additional law enforcement officers to increase sworn officer deployment and expand community policing designed to prevent crime, promote problem solving, and enhance public safety.
- Rehire law enforcement officers who have been laid off (as a result of State and local budget reductions) to increase sworn officer deployment and expand community policing.

Eligibility Requirements

Applications are invited from all law enforcement agencies, or consortia of law enforcement agencies, that can demonstrate a significant need for additional sworn law enforcement officers and are committed to using community policing to address crime and related problems in their jurisdictions. Eligible applicants under this program are law enforcement agencies that recruit and hire law enforcement officers who serve local communities. State law enforcement agencies may apply if they have law enforcement jurisdiction and provide local law enforcement services to communities within their State.

Application Requirements

The application must be developed in consultation with community groups and appropriate public and private agencies and must: A. Demonstrate the jurisdiction's public safety need for additional sworn law enforcement officers; B. include a strategy for community policing in the jurisdiction; C. include an implementation plan that specifies how the funds awarded under this project will help deploy additional sworn police for community policing activities; D. describe a plan to continue the project and retain the positions at the end of the grant period; E. discuss the availability and use of non-project funds and resources from other organizations; and F. provide a detailed budget proposal to support the grant request.

A. Public Safety Need: (40 Percent of the Selection Criteria)

Provide a narrative that describes the community's need for additional sworn law enforcement officers, as well as the reason(s) local funding is not available to meet these needs. The narrative should describe the jurisdiction's overall crime situation and highlight positive steps already taken to improve law enforcement effectiveness. These highlights might include, for example, any efforts already made to reduce the number of sworn officers in administrative positions. It is important to make the strongest case possible. Include any special conditions or factors that help to document your needs, such as relevant demographic trends and/or significant unemployment problems resulting from plant or military base closings, natural disasters, etc.

In addition to the narrative, provide information on the following factors, to the extent that it is available:

1. The population for the jurisdiction according to the 1990 U.S. Census.
2. The unemployment rate for the jurisdiction for each of the last 5 years.
3. The ratio of population to sworn officers, expressed as number of residents per sworn officer.
4. The number and types of citizen calls for service (i.e., emergency, non-emergency, violent offense, property offense, etc.) handled by patrol officers for each of the last 5 years.

5. The jurisdiction's Uniform Crime Report (UCR) rates (or their equivalent) for all Part I offenses for each of the last 5 years.

6. The actual number of full-time and part-time civilians and sworn law enforcement officers employed during each of the last 5 years.

7. The number of officers deployed, by function (administrative, patrol, and investigative), during each of the last 5 years.

8. The actual number of sworn officers laid off and/or furloughed during each of the last 5 years.

9. The actual operational expenditures for police services and total expenditures by the jurisdiction for each of the past 5 years.

10. The expenditures for police overtime and/or the amount of compensatory time granted in lieu of overtime spending for each of the past 5 years; provide an explanation for overtime expenditures.

B. Strategy: (30 Percent of the Selection Criteria)

Develop a 3-year strategy that specifies how additional sworn law enforcement officers would lead to increased community policing targeted against crime and related problems in the jurisdiction.

The strategy narrative should describe:

1. Any community policing activities currently used by the applicant, emphasizing those efforts that promote law enforcement partnerships with citizens and non-law enforcement organizations.

2. How the applicant will involve community leaders and residents in planning, implementing, and coordinating this project with non-law enforcement organizations.

3. How the applicant will coordinate this project with other criminal justice system components, including an assessment of the effects of additional police on these agencies.

4. The specific geographic area(s) to be served by this project and the crime and related problems that community policing would address effectively.

5. The specific strategies and innovations that the applicant will employ to respond to identified problems.

6. How the applicant will select the officers who will be assigned to community policing. (These officers do not need to be the officers actually hired with these project funds.)

7. How the applicant will assess how well the project was implemented and the extent to which the strategy has achieved the Program's goals and objectives.

C. Implementation Plan: (10 Percent of the Selection Criteria)

Provide a plan for implementing the strategy described in B. above. Provide a detailed schedule that includes milestones for significant tasks. The schedule and milestones must include the expected dates when newly hired/rehired officers will be sworn and deployed. Also provide the dates when officers will be assigned to project-related community policing activities.

D. Continuation and Retention Plan: (10 Percent of the Selection Criteria)

Describe how the applicant intends to continue this project and retain the positions created with the project funds following the conclusion of the grant period. If possible, include an endorsement of the jurisdiction's continuation and retention plan by local budget authorities.

E. Additional Resource Commitments: (10 Percent of the Selection Criteria)

Applicants are encouraged to apply other resources, Federal, State, local, or private, in support of this project. Describe the sources and the amounts of non-project funding or resources that will be available from all sources. Describe how those resources will be used. If no other funds or resources are available, please explain.

F. Budget Proposal

The application must contain a budget and budget narrative that specifically identifies salary and fringe benefits costs. Salary and fringe benefits costs are the only allowable costs. Standard fringe benefits paid by the jurisdiction should be supported by a list of itemized costs explaining what is included in the benefits package. Expenditure of project funds for overtime is expressly forbidden. The budget breakdown must show the number of officers to be hired, the salary and fringe benefits per officer, and the total salary and fringe benefits costs. Estimate scheduled salary increases, if any, over the life of the grant.

Program Evaluation

In addition to the assessment referenced in Application Requirements, section B, number 7, a national-level evaluation of this Program may be conducted in the future. The evaluation would use some combination of process and impact measures that may include, but would not be limited to, crime and victimization indices, quality-of-life measures, community perceptions, indications of changes in management philosophy, and individual police perceptions of their own work. Evaluators may visit sites to collect data for the evaluation. All selected applicants must be willing to participate in such national evaluation.

Selection Criteria

Applications will be evaluated based on the extent to which they meet the following weighted criteria:

Public Safety Need—40 percent
Soundness of Strategy—30 percent
Clarity and Appropriateness of Implementation Plan—10 percent
Continuation and Retention Plan—10 percent
Additional Resource Commitments—10 percent

The Department of Justice will award grants to those applicants that best meet all these criteria. Consideration may also be given to equitable distribution of grants based on geographic or other factors.

Federal Share

For each officer funded under this program, the Federal share may not exceed the greater of (1) 75 percent of the total salary and benefits over the life of the grant, up to a maximum of $75,000; or (2) 50 percent of the total salary and benefits over the life of the grant. The authorized Federal share per officer may be increased upon submission of sufficient evidence of extraordinary economic hardship, resulting from such factors as economic dislocation, a natural disaster, or other severe mitigating circumstances. An increase in the Federal share will be granted only in the most extreme circumstances. If the applicant agency is requesting an increase in Federal share, include the narrative and documentation justifying the request as an appendix to the application. Indicate on Standard Form 424—Budget Information—in Section F, Block 23, that a request is being submitted. Grantees may specify how the Federal share is disbursed over the life of the grant.

Distribution of Funds

As stated in the Overview, the total amount available for this program is $150 million, which will be allocated as follows:

1. $75 million will be allocated for grants to applicants serving jurisdictions with populations of 150,000 and above.

2. $75 million will be allocated for grants to applicants serving jurisdictions with populations of less than 150,000.

Application Process

All applications must be submitted on 8½ × 11 paper. The program narrative portion of the application should be no more than 30 pages double-spaced and should be printed on one side of the paper only. All applicants must also submit an Application for Federal Assistance (Standard Form 424), a signed original and two copies. To facilitate review, applicants are encouraged to submit one additional copy of their application. A copy of this form is provided in Appendix B of this application kit. Video presentations will not be accepted. Applications submitted via FAX will not be accepted.

Executive Order 12372 requires applicants from State and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if the Program has been selected for review by the State. A list of the State Single Point of Contacts is available in Appendix A of this application kit. Applicants must contact their State SPOC to determine if the Program has been selected for review by the State.

In addition to the required standard assurances that are part of the Standard Form 424, each application must include a certification that Federal funds made available under the grant will not be used to supplant State or local funds, but will be used to increase the amount of State or local funds that would be available for law enforcement purposes in the absence of Federal funds.

In submitting applications which involve a consortium of more than one agency, the relationships among the parties must be set forth in the application. In the event of a consortium submission, one agency must be designated as the payee to receive and disburse project funds and to be responsible for the supervision and coordination of the activities of the consortium members. Each co-applicant must sign the Standard Form-424.

Application Format

The following format and guidance are provided to assist the applicant in writing and organizing the program narrative section of the application. To assist the application review, the narrative should be presented in the same order as in the Application Requirements above:

Public Safety Need Section

This descriptive narrative should respond to Section A, page 2.

Information relating to items 1–10 should be displayed in a list format in the order in which they appear.

Strategy Section

This descriptive narrative should respond to Section B, page 2.

Implementation Plan Section

This descriptive narrative should respond to Section C, page 3.

Continuation and Retention Plan Section

This descriptive narrative should respond to Section D, page 3.

Additional Resource Commitments Section

This descriptive narrative should respond to Section E, page 3.

Budget

Use Standard Form 424—Budget Information—to display the total cost for each allowable category (i.e., Salary and Fringe Benefits) of the application. Refer to the Federal Share section if an increase in the Federal share is requested.

Budget Narrative

Include an itemization of proposed costs for personnel salaries, fringe benefits, and any scheduled salary increases. This descriptive narrative should respond to Section F, page 3. The narrative should also provide detail on Federal and non-Federal shares.

Standard Form 424

Most items on the cover page of the Standard Form 424 are self-explanatory. For purposes of this application, please include the following information:

Face Sheet, Block 7

Type of Applicant: If the applicant is representing a consortium of agencies, specify by checking Block N and entering Consortium.

Face Sheet, Block 10

Catalogue of Federal Domestic Assistance: The Number for this program is 16.580.

Title: Drug Control and System Improvement Discretionary Grant Program

Face Sheet, Block 11

Descriptive Title of Applicant's Project: List the following information in this order:

Police Hiring Supplement

Population of jurisdiction to be served: _____

Total number of sworn officers to be hired: _____

Name of jurisdiction to be served (i.e., "County of" or "City of"):

_____

Section F, Block 23

Indicate if the Applicant is requesting an increase in the Federal share.

Award Period

Grants will be awarded to help pay for salary and fringe benefits for a 3-year period.

Maximum Award Amount

- Eligible applicants serving a jurisdiction with a population of less than 150,000 may apply for a maximum of $1 million over the life of the grant.
- Eligible applicants serving a jurisdiction with a population between 150,000 and 749,999 may apply for a maximum of $2 million over the life of the grant.
- Eligible applicants serving a jurisdiction with a population between 750,000 and 2,000,000 may apply for a maximum of $3 million over the life of the grant.
- Eligible applicants serving a jurisdiction with a population in excess of 2,000,000 may apply for a maximum of $4 million over the life of the grant.

No waiver of the maximum award amounts will be granted.

DATES: Applications for funding under this program will be considered competitively in three rounds. Applications that are not selected in the first two rounds will be reconsidered during the subsequent round(s). It is anticipated that awards will be made in November and December 1993.

Round 1: Applications received no later than October 14, 1993, will be considered under Round 1.

Round 2: Applications received no later than November 1, 1993, will be considered under Round 2.

Round 3: Applications received and/or postmarked no later than December 1, 1993, will be considered under Round 3.

ADDRESSES: The original and three copies of the application must be submitted. To facilitate review, applicants are encouraged to submit one additional copy of their application. Copies should be sent to: U. S. Department of Justice, Office of Justice Programs, Control Desk, room 948, 633 Indiana Avenue NW., Washington, DC. 20531.

FOR FURTHER INFORMATION CONTACT: A special technical assistance line has been established at the Bureau of Justice Assistance to respond to requests for information and/or an Application Kit. Copies of the Application Kit were mailed on August 30, 1993, to all Members of Congress, police departments, sheriff's offices, mayor's offices, offices of the county executive,

State and local criminal justice planners, Indian tribes with law enforcement authority, and U.S. Attorneys' Offices. The technical assistance line can be reached by calling (202) 307–1480, Monday through Friday, 8 a.m. to 5 p.m., eastern time.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under section 6091 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181, 4328, 42 U.S.C. 3742(2).

Background

On July 2, 1993, the Bureau of Justice Assistance received a supplemental appropriation to the Edward Byrne Memorial State and Local Law Enforcement Assistance Administration Discretionary Grants Program in the amount of $150 million to implement the Police Hiring Supplement Program.

Curtis H. Straub,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 93–21183 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–18–P

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 27, 1993, Bridgeway Trading Corporation, 7401 Metro Blvd., suite 480, Minneapolis, Minnesota 55439, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 26, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21330 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 10, 1993, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Celgene Corporation plans to manufacture small quantities of the above controlled substances utilizing bio-catalysis to develop manufacture and sell high value-added compounds important to pharmaceutical and agrochemical industries.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

Dated: August 26, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21329 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7226, et al.]

Proposed Exemptions; Hazlehurst & Associates, Inc., Profit Sharing Plan and Savings, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the

evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemptions and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hazlehurst & Associates, Inc. Profit Sharing and Savings Plan (the Plan), Located in Bellevue, Washington, [Application No. D–7226]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective July 31, 1987, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to two past loans of money from the individual account in the Plan of David M. Gladstone (Gladstone), a party in interest with respect to the Plan, to Gladstone, provided that, as of July 31, 1987, the following conditions have been met:

1. The terms of the loans have been at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party;

2. The two loans together have not exceeded 25 percent of the assets of the individual account of Gladstone throughout the term of the loans;

4. The collateral securing the loans has been maintained throughout the duration of the loans at no less than 200 percent of the balance of the loans; and

5. The loans have involved only Gladstone's segregated account in the Plan.

Effective Date: If granted, this proposed exemption will be effective as of July 31, 1987.

Summary of Facts and Representations

1. Hazlehurst & Associates, Inc. (the Employer) is engaged in the business of consulting and actuarial services. The Plan provides for segregated accounts for each participant and permits each participant to direct the investments of his or her account among certain funds. As of September 30, 1987, the plan had 62 participants and total assets of approximately $4.4 million. The Plan permits loans to its participants and such loans must be made in accordance with section 408(b)(1) of the Act.

2. Gladstone is a Plan participant as well as a 29.5 percent owner of the Employer. The assets in Gladstone's account totaled $445,058 as of March 31, 1987. On that date, there were two loans outstanding in Gladstone's account. The loans involve only Gladstone's segregated account in the Plan and do not affect the accounts of other Plan participants. The applicant represents that the statutory criteria of section 408(b)(1) of the Act, which permits loans to Plan participants under certain conditions, were satisfied in regard to the two loans. The two loans were made at different times with different terms to maturity. Loan A, at an interest rate of 7.5 percent, had $20,035 remaining to its expiration in December 1996. Loan B, at an interest rate of 15.0 percent, had $27,130 remaining to its expiration in June 1989. Both loans were amortized through monthly payments of principal and interest. The two loans together accounted for approximately 10.6 percent of the assets in Gladstone's account.

3. Effective August 1, 1987, the Employer became a Subchapter S corporation as defined in Code section 1371. Section 408(d)(1) of the Act provides, in part, that section 408(b) of the Act shall not apply to any transaction in which a plan lends any part of the corpus or income of the plan to any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Code). For purposes of section 408(d) of the Act, a shareholder employee (as defined in section 1379 of the Code) is deemed to be an owner-employee. The applicant represents that Gladstone is a shareholder employee in regard to section 408(d). Accordingly, loans from the Plan to Gladstone in accordance with the provisions of section 408(b)(1) of the Act were no longer exempt under that section following the conversion of the Employer to a Subchapter S corporation.

4. The applicant represents that the interest rate on Loan A was raised to 15.0 percent as of July 31, 1987, in order to bring it more in line with comparable interest rates prevailing at that time.[1] The two loans originally were made with Gladstone's account balance in the Plan serving as security for the loans. however, effective July 31, 1987, the collateral on the loans consisted of shares of Essex Communications Corporation (Essex) common stock, which were traded on the NASDAQ national market system, or other marketable securities of comparable value. The applicant represents that there is no other encumbrance on such securities and that Gladstone owned a sufficient number of shares of Essex stock such that the collateral has been maintained at no less than 200 percent (in Essex stock or other marketable

[1] The Department expresses no opinion as to whether the specific terms of the loans were in conformity with the provisions of section 408(b)(1) of the Act. That section requires, among other things, that the loans bear a reasonable rate of interest.

securities) of the balance of the two loans throughout the term of the loans.[2]

5. The applicant represents that a security agreement, effective July 31, 1987, duly perfected in accordance with the laws of the State of Washington created a first lien on such securities. The Administrative Committee of the Plan, which is comprised of three employees of the Employer, has monitored the loans and will take whatever action is appropriate to enforce the rights of the account of Gladstone in the Plan under the terms of the loans, including foreclosing on the collateral if necessary.

Linda S. Morris, a vice president of the Rainier National Bank of Tukwila, Washington (the Bank), an unrelated commercial bank, stated that the Bank would have been willing on July 31, 1987, to make the same loans to Gladstone on the same terms. The applicant represents that all the payments due on the loans prior to and after the conversion of the Employer to Subchapter S status have been received by the Plan timely and in full.

6. In summary, the applicant represents that the transactions have satisfied the statutory criteria of section 408(a) of the Act because: (1) As of March 1987, the two loans combined accounted for only about 10.6 percent of the assets in Gladstone's account; (2) shares of Essex common stock owned by Gladstone which were traded on the NASDAQ national market system (or other marketable securities of comparable value) have served as the security for the loans; (3) the collateral has been maintained at no less than 200 percent of the balance of the loans throughout the term of the loans; and (4) the transactions involve only Gladstone's segregated account in the Plan and do not affect the accounts of other Plan participants.

Notice to Interested Persons: Because Gladstone is the only participant in the Plan to be affected by the transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Thrift Incentive Stock Ownership Plan (the Plan) of The Dime Savings Bank of New York, FSB, Located in New York, New York, [Application No. D–9440]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by The Dime Savings Bank of New York, FSB (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) All holders of the common stock of the Employer were treated in the same manner with respect to the Offering, including the Plan; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

Effective Date: This exemption, if granted, will be effective as of April 15, 1993.

Summary of Facts and Representations

1. The Employer is a Federal savings bank with its corporate headquarters in New York, New York. As of April 15, 1993, there were issued and outstanding 23,363,422 shares of Employer common stock (the Common Stock), of which 138,235 shares, or about .6 percent, were owned by the Plan. The Plan is a defined contribution employee benefit plan intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The trustee of the Plan is Citibank, N.A. (the Trustee), located in New York, New York. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts among four investment funds, one of which invests exclusively in the Common Stock (the Stock Fund). The other investment funds are a Savings Fund, a Fixed Income Fund, and an Equity Fund. As of March 31, 1993, there were 1,257 participants in the Plan, 219 of whose Accounts were invested or partially invested in the Stock Fund. As of March 31, 1993, the Plan held total assets of approximately $25,062,764.

2. The Employer represents that as a result of losses related to nonperforming assets, it became subject to a capital directive (the Directive) issued by its primary regulator, the Office of Thrift Supervision (OTS). In the Directive, the OTS required the Employer to file a capital plan to achieve target levels of capital. The capital plan submitted by the Employer and approved by the OTS on December 30, 1992 requires, among other things, that the Employer raise at least $125 million in new equity capital no later than the second calendar quarter of 1993. The Employer represents that in consultation with its financial advisors and after discussion with the OTS, the Employer determined that the most appropriate means to raise this new equity capital was through a rights offering (the Offering) to all holders of the Common Stock.

3. On April 15, 1993 (the Record Date), the Employer commenced the Offering by issuing to all holders of Common Stock as of the Record Date 1.1 transferable subscription rights (the Rights)[3] for each share of Common Stock held. The number of Rights actually distributed to each shareholder was rounded up to the nearest whole Right. Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one share of Common Stock (an Additional Share) at an exercise price of $6.00 per share. Each Right also conferred on its holder a second privilege (the Oversubscription Privilege) allowing each Right holder exercising the Basic Privilege in full to subscribe for an additional, unlimited number of Additional Shares, also at the exercise price of $6.00 per share, which remained available after satisfaction of subscriptions pursuant to the Basic Privilege. All funds submitted in exercise of Oversubscription Privileges

[2] Essex was purchased by a limited partnership in November 1987 and the cash proceeds from the purchase of the Essex shares in Gladstone's account were reinvested in other publicly traded shares of stock.

[3] The Department notes that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

were deposited in escrow with the Mellon Securities Trust Company pending satisfaction of all Basic Privilege subscriptions. If the number of Additional Shares available to satisfy Oversubscription Privilege requests were insufficient to meet all such requests, the available Additional Shares were to be allocated pro rata among all Oversubscription Privilege subscribers in proportion to the number of Common Stock shares owned by each subscriber as of the Record Date. The Employer authorized the issuance of up to 33,180,164 Additional Shares through the Offering, which also featured a management offering, a standby underwriting agreement, and standby purchase agreements, none of which are involved in the exemption proposed herein.

While the Rights were generally transferable, the Oversubscription Privileges were not transferable. The Employer represents that the Offering did not involve any guarantee or other assurance that any market would develop or remain available during the Offering. However, the Rights traded on the New York Stock Exchange through the last trading day prior to the expiration of the Offering.[4] The Offering was initially announced to expire at 5 p.m. on May 5, 1993, at which time no further exercises of Rights could occur. On April 28, 1993, the Employer announced that the expiration date for the Offering was extended from May 5 to May 10, 1993.

4. In anticipation of the Offering, the Plan and its related trust agreement (the Trust Agreement) were amended to permit each Plan participant with an Account balance invested in the Stock Fund (the Invested Participants) as of March 31, 1993 to direct the Trustee either to exercise or sell the Rights attributable to his or her Stock Fund account, and such amendments also established the procedure for such directions. The Employer represents that on April 16, 1993, all Invested Participants were sent, by overnight mail, a copy of the Offering circular published by the Employer, a letter from the Plan administrator providing information about the Offering, a letter from the Trustee describing the procedures for participant directions with respect to the Offering, and a direction form. The direction forms sent to Invested Participants enabled them to direct the Trustee either to exercise the Rights allocable to their Stock Fund accounts or to sell such Rights on the open market. As provided in the Plan and the Trust Agreement as amended, with respect to any Invested Participant who failed to submit a direction form to the Trustee by the due date, or submitted an invalid direction form, the Trustee was required to sell the Rights on the open market, and the Employer represents that this required sale was disclosed to the Invested Participants in the informational documents sent on April 16, 1993.

5. For each Invested Participant who directed the Trustee to exercise Rights attributable to his or her Stock Fund account, the funds which were needed to pay the exercise price were obtained by redeeming specific investments in the Invested Participant's Plan Account in the following order of priority: (a) Savings Fund, (b) Fixed Income Fund, (c) Equity Fund, and (d) Stock Fund. Within each investment fund, redemptions and liquidations were made from the following different types of contributions under the Plan, by fully redeeming one contribution type within an investment fund before redeeming the next contribution type within that same fund in the following order of priority: (a) after-tax personal contributions, (b) rollover contributions and rollover transfer contributions, (c) pre-tax personal contributions, and (d) bank matching contributions.

6. Where amounts were redeemed from the investment funds prior to the last day of the Offering, the Plan and Trust Agreement as amended provided that the Trustee deposit the proceeds of such redemptions in a special short-term investment account pending the Trustee's payment to the subscription agent of the exercise price for the Additional Shares. Rights were exercisable by an Invested Participant only to the extent of funds available in his or her Account in the Plan. If amounts in an Invested Participant's Account were insufficient to pay the exercise price for all Additional Shares subscribed for, the Plan and the Trust Agreement, as amended, provided that the Trustee was to attempt to sell any Rights not exercised. The proceeds of any Rights that were sold and any income from the special short-term investment account were credited, with respect to such sale proceeds, to the Accounts of the Invested Participants whose allocable Rights were sold, and in the case of such income, to the Accounts of the Invested Participants whose redemption proceeds were deposited in the special short-term investment account.

7. In the event that the market price for the Common Stock, including the effect of any applicable brokerage commissions and other expenses, at the time the Trustee would submit Rights for exercise, was less than the exercise price under the Offering, the Plan and Trust Agreement, as amended, provided that the Trustee would not exercise such Rights. However, in the above situation, an Invested Participant was permitted to direct the Trustee to (a) apply the proceeds otherwise available to pay the exercise price for Additional Shares to the purchase of Common Stock shares on the open market, or (b) refrain from purchasing any Common Stock, either through exercise of the Rights or on the open market, and thereby to allow such Rights to expire. The Employer represents that at 10 a.m. on May 10, 1993, the date of expiration of the Offering and the date on which the Trustee exercised Rights on behalf of Invested Participants directing the exercise of the Rights, the exercise price of a Right was less than the market price for a share of Common Stock on the New York Stock Exchange, after giving effect to any applicable brokerage commissions and other expenses. Accordingly, the Trustee exercised all Rights for which a direction to exercise was submitted by an Invested Participant.

8. The Employer represents that in order to give the Trustee sufficient time to perform the administrative procedures required to review participant direction forms and implement directions, including, as required, the liquidation of other Plan investments, the procedure for participant direction with respect to the Offering included timing deadlines for the filing of instructions in advance of the expiration of the Offering. Accordingly, Invested Participants were required to return the direction forms to the Trustee by 5 p.m. on April 28, 1993, with respect to Accounts which did not require the liquidation of Stock Fund assets in order to obtain funds for the exercise of the Rights. However, with respect to any Invested Participant whose direction to exercise Rights necessitated the redemption of funds from his or her Account balance in the Stock Fund, the deadline for filing direction forms with the Trustee was April 26, 1993, due to additional administrative procedures involved in the liquidation of assets from the Stock Fund.

9. The Employer represents that the following is a summary of the Offering:

(a) A total of 33,117,332 Rights were exercised. Among 219 Invested Participants, 79 directed the exercise of Rights, resulting in the exercise of 52,581 Rights, or about 0.16 percent of the total number of Rights exercised.

[4] The common stock of the Dime Savings Bank of New York, FSB is also traded on the New York Stock Exchange.

(b) Among the Invested Participants, 35 affirmatively directed that the Rights allocated to their Accounts be sold, resulting in the sale of 66,633 Rights.

(c) Among the Invested Participants, 108 did not respond.[5] In accordance with the Plan and Trust Agreement, as amended, the Rights allocated to their Accounts were sold, resulting in the sale of 32,820 Rights.

(d) A total of 1,953,949 Additional Shares were issued through the Oversubscription Privilege, including 30,702 shares, or about 1.57 percent of the total, acquired by the Plan on behalf of 30 Invested Participants who elected to exercise the Oversubscription Privilege.

(e) An additional 2,404,452 Additional Shares had been requested, but not acquired, through the Oversubscription Privilege, requiring the return of $14,426,712 to oversubscribing shareholders. Of these amounts, 7,176 Additional Shares were requested, but not acquired, on behalf of oversubscribing Invested Participants, requiring the return of $43,056 to the Plan on behalf of oversubscribing Invested Participants, constituting about 0.30 percent of the total amount refunded to oversubscribers.

(f) The Employer represents that all directions and instructions which were filed by Invested Participants with respect to the Offering were observed and executed by the Trustee, and that all Invested Participants had been notified adequately in advance of the Offering of the procedure for directing and instructing the Trustee with respect to their Accounts' rights under the Offering. Accordingly, the Employer represents that all actions by the Trustee relating to the Offering, with respect to the Accounts, were pursuant to express participant directions, except for the Accounts of participants who failed to file timely and valid instructions with the Trustee pursuant to the procedure. The Employer maintains that the Trustee's action on behalf of Accounts whose participants failed to file instructions with the Trustee, which was the sale of the Rights received by such Accounts, was fully disclosed in the direction form and explanatory materials sent to Invested Participants, and was consistent with the participant-directed nature of investments under the Plan.

[5] The results reported above indicate a total of 222 Invested Participants, although there were only 219 Invested Participants as of the Record Date of the Offering. Because certain Invested Participants directed that some of their Rights be exercised and that some be sold, those Invested Participants were counted twice.

10. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (1) The Plan's acquisition of the Rights resulted from an independent act of the Employer; (2) With respect to all aspects of the Offering, all holders of Common Stock were treated in the same manner, including the Plan; (3) All decisions with respect to the Plan's acquisition, holding, and control of the Rights were made by the individual Invested Participants whose Accounts held interests in the Stock Fund, except for those participants who failed to file timely and valid instructions, in which case the rights were sold; and (4) The acquisition and holding of Rights by the Plan affected only about 17.4 percent of the Plan's participants, whose Accounts held only about .06 percent of the Common Stock outstanding as of the Record Date of the Offering.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of August, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 93–21421 Filed 9–1–93; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 93–53; Exemption Application No. D–9370, et al.]

Grant of Individual Exemptions; Pro Golf Discount/Distributors of Atlanta, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pro Golf Discount/Distributors of Atlanta, Inc., Profit Sharing Plan (the Plan) Located in Norcross, Georgia [Prohibited Transaction Exemption 93–53; Exemption Application No. D–9370]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of certain limited partnership interests (the Interests) from the Plan to William B. Neidlinger (Neidlinger), a party interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interests is established by a general partner of the partnerships who is independent of Neidlinger and Pro Golf Discount/Distributors of Atlanta, Inc. (the Employer);

2. Neidlinger pays all cash to the Plan for the Interests;

3. The cash payment is no less than the greater of the current fair market value of the Interests or the total expenditures of the Plan on the Interests as of the date of sale; and

4. The Plan pays no fees or other expenses in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 9, 1993, at 58 FR 32375.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Hanover Orthopaedic Associates, Inc., Profit Sharing Plan (the Plan) Located in Hanover, Pennsylvania [Prohibited Transaction Exemption 93–54; Application No. D–9384]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale (the Sale) from R. James Rinker, M.D.'s (Dr. Rinker) individually-directed account (the Account) in the Plan of certain property (the Property) to Dr. Rinker, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time cash transaction;

(b) The Plan is not required to pay any commissions, costs or other expenses in connection with this transaction;

(c) The Property is appraised by a qualified, independent appraiser; and

(d) The sales price for the Property reflects its fair market value on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37528.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Riser Foods, Inc., Employee Savings and Retirement Plan (the Plan) Located in Bedford Heights, Ohio [Prohibited Transaction Exemption 93–55; Exemption Application No. D–9323]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit over a one-year period (the Loans) to the Plan by Riser Foods, Inc., the sponsor of the Plan, with respect to a group annuity contract (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loans (the Repayments) by the Plan; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The Repayments shall not exceed the amount of the Loans;

(D) The Repayments shall not exceed the amounts actually received by the Plan from Mutual Benefit, any state guaranty fund, and any other responsible third party payors with respect to the GAC (the GAC Proceeds); and

(E) The Repayments of the Loans shall be waived to the extent that the total amount of the Loans exceeds the total GAC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37526.

TEMPORARY NATURE OF EXEMPTION: This exemption shall apply to Loans executed within one year from the date on which the first of such Loans is executed.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

John William Boor, M.D. Profit Sharing Plan and Trust Located in West Chester, PA [Prohibited Transaction Exemption 93–56; Application No. D–9273]

Exemption

The restrictions of section 406(a)(1)(A)–(D) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of two undeveloped parcels of real property (the Parcels) to John W. Boor, M.D. and his wife, Barbara Boor, (Dr. and Mrs. Boor), parties in interest with respect to the Plan; provided that the following conditions are met: (a) The sales of the Parcels will be one-time transactions for cash; (b) the fair market value of the Parcels will be determined by an independent qualified appraiser on the date of the sales; (c) the purchase price paid by Dr. and Mrs. Boor will be the greater of the cost to the Plan to acquire and hold the Parcels or the aggregate fair market value of the Parcels on the date of the sales; (d) the terms of the transactions are no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated third parties; (e) the Plan will pay no costs, or commissions associated with the transactions, nor any other expenses associated with the

application for exemption; and (f) the account of Jane Forsythe in the Plan will receive compensation of an amount reflecting a ten percent (10%) rate of return, annualized from September 1, 1992, through the date the payment is made.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1993, at 58 FR 34825.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Southwest-Tex Leasing Co., Inc., Profit Sharing Plan (the Plan) Located in San Antonio, TX [Prohibited Transaction Exemption 93–57; Exemption Application No. D–8871]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain undeveloped real property (the Property) to Walker Resources, Inc., a party in interest with respect to the Plan for the greater of $95,800 or the fair market value of the Property at the time the sale transaction is consummated.

This exemption is conditioned on the following requirements: (1) The sale is a one-time transaction for cash; (2) the Plan does not pay any real estate fees or commissions in connection therewith; (3) the sales price reflects the greater of $95,800 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the sale; and (4) an independent fiduciary monitors the proposed sale transaction on behalf of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37512.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of August, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–21420 Filed 9–1–93; 8:45 am]

BILLING CODE 4510–29–P

MERIT SYSTEMS PROTECTION BOARD

Appointment of Members to the Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Appointment of Members to the Performance Review Board.

SUMMARY: This notice publishes the names of the new and current members of the Performance Review Board as required by 5 U.S.C. 4314(c)(4).

Lonnie L. Crawford has been appointed Chairman of the Performance Review Board (PRB) at the Merit Systems Protection Board. Mary L. Jennings has been appointed as a new member. Lois E. Hartman, Harold Kessler and P.J. Winzer will continue to serve on the PRB.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Marsha Scialdo Boyd, Director, Human Resources Management, 1120 Vermont Avenue, NW., Washington, DC 20419.

Dated: August 30, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–21422 Filed 9–1–93; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–072]

Intent To Grant an Exclusive Patent License; Pinnacle Imaging, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Pinnacle Imaging, Inc. of Irvine, California, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,029,220, entitled "Optical Joint Correlator for Real-Time Image Tracking and Retinal Surgery," filed on July 2, 1991. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATES: Comments to this notice must be received by November 1, 1993.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: August 25, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–21354 Filed 9–1–93; 8:45 am]

BILLING CODE 7501–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing.
Date and Time: September 20, 1993; 8:30 a.m. to 5 p.m.
Place: Room 417, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. Robert Voigt, Program Director, New Technologies, rm. 417, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7727.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21385 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.
Date and Time: September 20 and September 27, 1993.
Place: Rm. 1242 and 543, National Science Foundation.
Type of Meeting: Closed.
Contact Person: Dr. Benjamin B. Snavely, room 615, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9793.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Small Business Innovation Research Program proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 27, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21383 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in the Division of Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 28, 1993; 8:30 a.m.–5 p.m.
Place: National Science Foundation, 1800 G Street, NW., room 1133, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Fred Heineken, Program Director, Biotechnology and Biochemical Engineering, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9545.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Small Business Innovative Research (SBIR) proposals for the Biomedical Engineering and Research to Aid Persons with Disabilities Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21382 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 5 meetings:

Name: Special Emphasis Panel in Design & Manufacturing Systems.
Dates & Locations: September 22 (2), September 22–23, and September 28, 1993 (2). Meetings will be held at the National Science Foundation from 8:30–5 p.m. each day.
Contact Persons: Dr. Thom Hodgson, Dr. Stan Settles, Dr. Hank Grant, Dr. Cheena Srinivasan, and Dr. Bruce Kramer, Design & Manufacturing Systems, room 1128, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–5167.
Type of Meetings: Closed.
Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21387 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.
Date and Time: September 20, 1993; 8:30 a.m.
Place: Room 500A–D, 1110 Vermont Avenue, Washington, DC.
Type of Meeting: Closed.
Contact Person: Brian J. Clifton and Linton G. Salmon, Program Director, ECS, room 1151, NSF, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9618.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate the Small Business Innovation Research (SBIR) proposals for the Solid State and Microstructures Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 27, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21384 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Panel Name: Polar Ocean and Climate Sciences Panel Meeting.
Date and Time: September 20, 1993, 8 a.m.–5 p.m.
Place: National Science Foundation, room 523, 1800 G. Street N.W. Washington, D.C. 20550.
Type of Meeting: Closed.
Contact Person: Bernhard Lettau, Program Manager, OPP, 620 National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7894.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–21381 Filed 9–1–93; 8:45 am]
BILLING CODE 7555–01–M

Phase I Small Business Innovation Research Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Polar Programs.
Date and time: September 21, 1993.
Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Mr. Charles E. Myers, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7818.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Goverment in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–21386 Filed 9–1–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Meeting; National State Liaison Officers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of National State Liaison Officers' meeting.

On September 29 and 30, 1993, the Nuclear Regulatory Commission (NRC) will sponsor a national meeting with the State Liaison Officers to discuss items of mutual regulatory interest. The State Liaison Officers are appointed by each of the fifty Governors and the Commonwealth of Puerto Rico to provide a communication channel between the States and NRC. Topics of discussion will include: Decommissioning of Contaminated Sites, Low-Level Waste, Medical Misadministration, Materials Licensing, Plant License Renewal, High-Level Waste, International Nuclear Activities, Dry Cask Storage and Emergency Planning. The meeting will be conducted at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5 p.m. on Wednesday, September 29 and from 8:30 until 12 noon on Thursday, September 30. Questions regarding the meeting should be directed to Mindy Landau at (301) 504–2308.

Dated at Rockville, Maryland, this 25th day of August, 1993.

For the Nuclear Regulatory Commission.

Richard L. Bangart,
Director, Office of State Programs.

[FR Doc. 93–21355 Filed 9–1–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Fermi–2; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (the licensee), for operation of the Fermi–2 facility located in Frenchtown Township, Monroe County, Michigan. The proposed amendment would make changes to job titles and changes to the Onsite Review Organization identified in section 6.0 of the Technical Specifications included as Appendix A to the Facility Operating License. The proposed amendment would also make changes to the overtime limit restrictions and control requirements located in section 6.0 of the Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 1, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the result of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extend of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William M. Dean: Petitioner's name and telephone number: date petition was mailed: plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92

For further details with respect to this action, see the application for amendment dated May 24, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 25th day of August.

For the Nuclear Regulatory Commission.

William M. Dean,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21356 Filed 9–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–1, issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon.

The proposed amendment would revise license condition 2.C.(8) concerning the Trojan Nuclear Plant (Trojan) Fire Protection Program. The licensee proposed this new license condition in accordance with Generic Letters 86–10 and 88–12, and as part of a request to relocate those portions of the Trojan Technical Specifications (TS) that are related to the Trojan Fire Protection Program from the TS to Topical Report PGE–1012, "Trojan Nuclear Plant Fire Protection Plan."

Portland General Electric submitted a timely application for this proposed amendment on March 16, 1993, and a notice was published on June 23, 1993, in the **Federal Register** (58 FR 34088) as required by Commission regulations 10 CFR 50.91(a)(2). However, the NRC staff noted that because of an administrative error, the notice did not identify that, in addition to relocating the Fire Protection Program, the proposed amendment included the revised license condition. This notice is being issued specifically to identify the inclusion of the revised license condition in the amendment request. It is being issued as an exigent 15-day notice because more than 60 days have already been provided for public comment, with no comments received.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or the consequences of an accident previously evaluated.

This amendment merely relocates the fire protection program elements from the [Trojan Technical Specifications] TTS to PGE–1012. No change is being made to the content of the TTS being relocated. Operating limitations will continue to be imposed, and required surveillances will continue to be performed in accordance with written procedures and instructions auditable by the NRC.

Although proposed future changes to the fire protection program elements previously located in the TTS will no longer be controlled by 10 CFR 50.90, proposed changes to the TS requirements relocated to PGE–1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

Thus, programmatic controls will continue to assure that this change will not have the effect of permitting future proposed fire protection program changes to create an unreviewed safety question. It is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

PGE–1012, incorporated by reference in Trojan FSAR Section 9.5.1, contains the Trojan fire hazards analysis. This amendment merely relocates the fire protection TS requirements from the TTS to PGE–1012. No change to the fire protection TS requirements is being made and thus the change does not create the possibility of a new or different accident from those previously evaluated.

As noted above, proposed changes to the TS requirements relocated to PGE–1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

This change does not involve a reduction to the approved fire protection program or TS fire protection requirements. The TS fire protection requirements are being relocated, without alteration to PGE–1012. Since there is no change to the requirements, there is no reduction in the margin of safety.

As noted above, proposed changes to the TS requirements relocated to PGE–1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 17, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Non-Power Reactors and Decommissioning Project Directorate, Michael Masnik, Senior Project Manager, U.S. Nuclear Regulatory Commission, OWFN MS 11–B–20, Washington, DC 20555: Date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leonard A. Girard, Esquire, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97304, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 16, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 27th day of August 1993.

For the Nuclear Regulatory Commission.

Michael K. Webb,

Acting Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21357 Filed 9–1–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

August 27, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Factory Stores of America, Inc.
Common Stock, $.01 Par Value (File No. 7–11216)

Garan, Inc.
Common Stock, $.01 Par Value (File No. 7–11217)

MuniVest Pennsylvania Insured Fund
Shares of Beneficial Interest, $.10 Par Value (File No. 7–11218)

MuniYield Arizona Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11219)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 20, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21373 Filed 9–1–93; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Aquatic Plant Management Program; Record of Decision

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of the record of decision for TVA's supplemental environmental impact statement, "Aquatic Plant Management Program".

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act (NEPA) and section 5.4.9 of TVA's implementing procedures, 45 FR 54111–15 (1980), that TVA has decided to adopt the preferred alternative in its final supplemental environmental impact statement (SEIS),

"Aquatic Plant Management Program." This final SEIS was made available to the public the week of June 14, 1993, and notice of its availability was published in the **Federal Register** on June 25, 1993, at 58 FR 34434. TVA has decided to continue its integrated Aquatic Plant Management Program and to better involve the public in deciding where aquatic plants should be managed on individual reservoirs.

FOR FURTHER INFORMATION CONTACT: Robert Pryor, Manager, Environmental Compliance, Water Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 10C, Knoxville, Tennessee 37902–1499, telephone (615) 632-6695. Copies of the final SEIS may be obtained from M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 Summit Hill Drive, WT 8B, Knoxville, Tennessee 37902–1499.

SUPPLEMENTARY INFORMATION: TVA's SEIS updates TVA's Final EIS, "Control of Eurasian Watermilfoil," that was released in 1972. The SEIS evaluates the potential environmental impacts associated with TVA's efforts to manage excessive aquatic vegetation growth in its reservoir system. In addition to Eurasian watermilfoil, populations of other non-native species, including hydrilla and spinyleaf naiad, and a few native species, have increased to problem levels in several TVA mainstream reservoirs. Left unmanaged, these plants have the potential to create mosquito habitat and conflict with navigation, recreation, and water supply uses because of their ability to grow profusely and form dense aquatic beds.

TVA began its Aquatic Plant Management Program after Eurasian watermilfoil began to propagate in the TVA reservoir system in the late 1950s and early 1960s. Because of the open habitat and the absence of natural controls, this exotic plant quickly spread throughout the reservoir system. TVA experimented with different control methods but the early 1960s had identified water-level manipulations (reservoir drawdowns), supplemented with the use of herbicides (2,4–D), as the best means of managing watermilfoil. In 1968, watermilfoil covered approximately 25,000 reservoir surface acres but, as TVA gradually increased its control efforts, watermilfoil populations began to decline.

The National Environmental Policy Act was enacted in 1970, and TVA released an EIS on its Aquatic Plant Management Program in September 1972. This EIS examined a number of alternative management strategies including no control, mechanical controls, biological controls, water-level manipulation alone, and use of 2,4–D alone. The EIS examined in detail the potential impacts of 2,4–D, including potential health risks and its toxicity to animals and aquatic organisms; and it also provided information about other aquatic herbicides. The 1972 EIS indicated that TVA would continue to monitor advancements in aquatic plant management—including the development of new aquatic herbicides—for possible use in the program.

Since the release of the initial EIS, the program has evolved to address the additional plant species which have become problems in the reservoir system. Water-level manipulations supplemented with treatments of 2,4–D proved to be ineffective against most of these new species but other EPA-approved herbicides worked. These other herbicides were added to the program after they were further tested by TVA. Today's program continues to rely on a integrated management strategy. The number of herbicides used in the program has increased to reflect the existence of new problem species and improvements in aquatic herbicides, and the number of species managed in the program has increased. However, water-level manipulations supplemented with herbicide treatments remain TVA's preferred control techniques.

The goal of the program is not to eradicate all aquatic plants but to manage them in "priority" areas—those areas where use conflicts occur—such as public access areas; water supply intakes; marinas; and residential, public, and commercial docks. Aquatic plants can provide valuable habitat for fish and wildlife; and consequently, most of the aquatic plant acreage on TVA's reservoirs is left untreated and unmanaged except for the effects achieved by water-level manipulation.

Alternatives Considered

The following alternatives were considered by TVA and were evaluated in the SEIS: (1) No control, (2) the current program which includes water-level manipulations and supplemental herbicide treatments, (3) biological controls, (4) mechanical controls, and (5) physical controls. It is difficult to identify which of these may be environmentally preferable because they each have potential negative environmental effects.

The "no control" alternative was viewed by a number of those commenting on the SEIS as environmentally preferable, but left unchecked some exotic aquatic plants can grow so profusely that native species are lost. In addition, dense plant beds can provide increased habitat for disease vectors (e.g., mosquitoes), pose safety risks to swimmers, and result in decreased dissolved oxygen levels and increased biochemical oxygen demand. TVA's analyses suggest that, in the future, appropriate biological controls could potentially be integrated into the Aquatic Plant Management Program and such controls would likely be more environmentally benign. However, an "appropriate" biological control method, such as grass carp, would have to incorporate safeguards which ensure that the result is not simply replacing one problem exotic species with another. TVA will continue to investigate promising biological controls.

Basis for Decision

Under the TVA Act, TVA has broad responsibilities for navigation, flood control, reforestation, improvement of marginal lands, and agricultural and industrial development in the Tennessee Valley. In the context of these broad goals, the TVA Act specifically directs TVA to manage its reservoir system primarily for navigation, flood control, and power generation. Consistent with these purposes and TVA's statutory responsibilities, TVA attempts to manage its reservoir system to allow multiple uses by the public. TVA's Aquatic Plant Management Program is one of the ways that TVA seeks to promote and secure multiple uses of its reservoirs.

The central issue in the SEIS review process was the use of herbicides as a component of TVA's current program. Some of those commenting expressed concern about the health and environmental effects of aquatic herbicides and the role of herbicide treatments in the substantial decline in aquatic vegetation on TVA reservoirs that occurred in 1990. Broad assertions were made that TVA was harming the reservoir system and a number of anecdotal reports were received about diseased and deformed fish, especially on Chickamauga Reservoir. Specific questions about the effect of inert ingredients in herbicide formulations, the potential for synergistic and cumulative impacts from multiple herbicide treatments, and the potential health effects of 2,4–D were asked. TVA's SEIS addresses all of these concerns, and they have been considered in the decision made to continue the program.

There has been a substantial decline in aquatic plant populations following a period of extreme aquatic plant growth during the recordbreaking drought which occurred in Tennessee Valley in the mid to late 1980s. Regional flooding occurring in 1989 literally washed away huge amounts of aquatic plants, and a return to more normal rainfall conditions in 1990 broke the drought and produced more normal growing conditions for aquatic plants. TVA's program had very little to do with this substantial decline. In the last two years, aquatic plant acreage on most reservoirs has once again begun to increase, and TVA is receiving a growing number of requests to continue its management activities.

TVA's information does not confirm the reports of high incidences of diseased and deformed fish. In response to the comments, TVA conducted special fishing sampling on its Chickamauga and Guntersville Reservoirs. Fish populations on both of these reservoirs appear to be both abundant and healthy. Although fishing catch rates appear to be down on both of these reservoirs, TVA's studies indicate that popular game species such as bass remain abundant.

There are unavoidable risks associated with the use of any chemicals such as herbicides which are formulated to kill unwanted plant species, but TVA has structured its program to minimize the use of herbicides and these risks. TVA uses only EPA-approved herbicides that are formulated for aquatic environments and are low risk, and it uses only limited amounts in limited areas. The herbicide labeling process employed by EPA, that results in the approval of herbicides for specified uses, requires analysis and consideration of potential health and environmental effects. Both chronic and acute effects are considered and, although more attention is given to the active ingredient of a herbicide formulation, evaluations of whole formulations (active and inert ingredients) are conducted. EPA does not approve a label for a herbicide until it determines that its use will not cause unreasonable adverse effects to humans, crops, wildlife, or to the environment as a whole. TVA applicators are well trained and the limited amounts of herbicides used in the program are applied in a manner which minimizes the risk of public exposure.

TVA does not rely solely on the herbicide labeling process despite the substantial safeguards it provides. TVA monitors and stays abreast of all pertinent herbicide research activities and conducts its own herbicide-related research activities. For example, TVA is currently engaged in an extensive herbicide research and monitoring program on Guntersville Reservoir to obtain more information about and a better understanding of herbicide persistence, potential for bioaccumulation, and effectiveness. Over the more than twenty years of its program, TVA has conducted numerous research and monitoring studies and perhaps has, as an institution, some of the best experience and expertise in aquatic herbicide effects and effectiveness in the country.

TVA's studies and experience confirm that, when used according to label instructions, aquatic herbicides do not pose undue risks to public health or the environment. The SEIS concludes that TVA's management program, including its use of aquatic herbicides, has not resulted in significant adverse impacts on the environment, including sensitive resources. For example, the program is planned to avoid the use of herbicides in areas where threatened and endangered species are located and is otherwise conducted in a manner to avoid impacting such species. Years of post-treatment monitoring have not indicated the existence of cumulative or synergistic effects and such effects are not likely to occur considering the kinds of herbicides used (low persistence) and the limited areas in which they are used (less than two percent of huge reservoirs).

To date, TVA has not found a better method of managing excessive amounts of watermilfoil than the use of 2,4-D, and ceasing use of this herbicide would limit our ability to effectively manage this exotic species. TVA is paying close attention to EPA's ongoing review of the health effects of 2,4-D. In the last several years, 2,4-D's potential carcinogenic properties have again been questioned. Although EPA has not restricted its use, EPA has required additional analyses and studies. There have been hundreds of studies which have not found adverse health or environmental effects from use of 2,4-D. TVA does not expect that EPA's current review will conclude that use of 2,4-D poses undue risks of adverse effects much less that the limited and careful way in which TVA uses it poses such risks. However, TVA's use of 2,4-D has declined and should the ongoing review indicate that TVA's use of 2,4-D poses a legitimate cause for concern or should TVA's monitoring or research activities detect cause for concern, TVA will modify its use of this herbicide, including dropping it from the program if appropriate.

Although TVA's decision is to continue its integrated plant management program, this does not mean that consideration of other management methods will cease. A fundamental feature of TVA's program is the evaluation of new management methods and the incorporation of methods which prove to be more effective and more environmentally safe. This will continue.

For example, TVA is in the midst of a multi-year assessment of the merits of grass carp, a fish species which prefers to eat hydrilla. TVA released 100,000 sterile grass carp into Guntersville to better determine their effectiveness in the control of hydrilla and their potential effect on other species. To date, the results have been promising, and TVA could add this biological control method as a component of its integrated management program. TVA is also continuing to evaluate the merits of mechanical harvesters. It appears that mechanical harvesters may not be economical in most situations. They also tend to generate plant fragments which can lead to colonization downstream, and they can have localized negative environmental effects including killing small fish caught in the harvester and increasing turbidity. However, in some settings such as in proximity to drinking water intakes, they could be the control method of choice; and TVA may add this as another component of its program.

Decision

For the reasons summarized above and explained in greater detail in its SEIS, TVA has decided to continue its integrated Aquatic Plant Management Program. This means that it will continue to limit the supplemental use of herbicides to those areas where excessive plant growth conflicts with legitimate uses of the TVA reservoir system and to apply herbicides only when plant growth in these areas becomes excessive. TVA will also continue to follow herbicide research activities undertaken by EPA and others and will continue its own research and monitoring activities. It will adjust its program to account for the results of these external and internal research activities to ensure that the risks of adverse health and environmental impacts remain low. It will also continue to evaluate and incorporate new management methods into the program that are determined to be more effective and more environmentally safe.

TVA has also decided to make one process change in its program: More formal involvement of interested

members of the public and other agencies in the planning of management activities on each reservoir. The SEIS refers to this as the "master planning" process, a process which TVA employed on a trial basis on Guntersville Reservoir several years ago. Essentially with this process, reservoir-specific management plans are developed through an interactive public process. Because substantial resources are required to do this and critical personnel are limited in number, master plans will have to be developed sequentially for the reservoirs on which management activities are conducted. In the interim, TVA's current planning process will be employed (this also involves preparation of reservoir-specific management plans which are publicly available). TVA will initiate the master planning process first on Chickamauga. This effort is expected to commence by September of this year.

Dated: August 23, 1993.

Norman A. Zigrossi,

President, Resource Group.

[FR Doc. 93–21326 Filed 9–1–93; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–39]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 22, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 25, 1993.

Danvers Long,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27362
Petitioner: Ventura Air Services, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(2), 135.165(a)(1) and (a)(6) and (b)(6) and (7)
Description of Relief Sought: To allow the Ventura Air Services, Inc. to conduct extended overwater operations using a single high frequency communications system and a single long-range navigation system.

Docket No.: 27390
Petitioner: Mr. Wayne K. Guessford
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27397
Petitioner: Mr. Paul E. Ebiner
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27401
Petitioner: Mr. Alan Watson
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 27137
Petitioner: Industrial Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Industrial Helicopters, Inc. (IHI) to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 18, 1993, Exemption No. 5721*

Docket No.: 27138
Petitioner: Heli-Lift, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Heli-Lift, Inc. (HLI) to operate without a TSO–C112 (Mode S) transponder installed on HLI's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5713*

Docket No.: 27142
Petitioner: Horizon Helicopters
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Horizon Helicopters (HHL) to operate without a TSO–C112 (Mode S) transponder installed on HHL's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5714*

Docket No.: 27144
Petitioner: New York Helicopters
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow New York Helicopters (NYH) to operate without a TSO–C112 (Mode S) transponder installed on NYH's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5712*

Docket No.: 27166
Petitioner: Puget Sound Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Puget Sound Helicopters, Inc, (PHI) to operate without a TSO–C112 (Mode S) transponder installed on PHI's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5710*

Docket No.: 27167
Petitioner: Alaska Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Alaska Helicopters, Inc. (AHI) to operate

without a TSO–C112 (Mode S) transponder installed on AHI's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5709*

Docket No.: 27205
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Federal Express Corporation (FEC) to operate without a TSO–C112 (Mode S) transponder installed on FEC's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5711*

Docket No.: 27230
Petitioner: ERA Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow ERA Aviation, Inc. (ERA) to operate without a TSO–C112 (Mode S) transponder installed on ERA's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5718*

Docket No.: 27258
Petitioner: Air Methods
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Air Methods (AMD) to operate without a TSO–C112 (Mode S) transponder installed on AMD's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5720*

Docket No.: 27309
Petitioner: State of Louisiana, Department of Social Services on Behalf of Mr. David Abshire
Sections of the FAR Affected: 14 CFR 65.71(a)(2)
Description of Relief Sought/ Disposition: To enable Mr. David Abshire to become eligible for a mechanic certificate and associated ratings although he cannot speak the English Language. *Grant, August 18, 1993, Exemption No. 5719*

[FR Doc. 93–21393 Filed 9–1–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc. 7th Meeting of Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHZ)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 172 meeting to be held October 4–7, 1993, in the RTCA Conference Room at 1140 Connecticut Avenue, SW, suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory Remarks (starting @ 9:30 a.m. first day only); (2) Approval of summary of sixth meeting; (3) General discussion of activities; (4) WG's 1 & 2 meet sequentially (equivalence of 1½ day each) (a) WG1, VHF, Communications System Recommendations (b) WG 2, VHF Radio Signal-in Space MASPS; (5) Plenary reconvenes (a) Review progress of working groups (b) Task assignment; (6) Other business; (7) Date and place of next meeting.

Specific Schedule: Monday, October 4 WG1 (1½ days +),Tuesday, October 5 WG2 (1½ days +), Thursday October 7 Plenary (½ day).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 26, 1993.

Joyce J. Gillen,
Designated Officer.

[FR Doc. 93–21389 Filed 9–1–93; 8:45 am]
BILLING CODE 4910–13–M

Technical Standard Order (TSO)–C22g, Safety Belts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change to technical standard order.

SUMMARY: By this notice, a change is incorporated into Technical Standard Order (TSO) C22g. This change deletes the last sentence in the Applicability paragraph. The applicability paragraph did not allow the manufacture of previously approved safety belts.

DATES: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Background

A notice of availability of proposed TSO–C22g was issued March 17, 1992. The proposed TSO–22g stated that "safety belts approved prior to the date of the TSO may no longer be manufactured under the provision of their original approval." This was a special proposed restriction, not included in TSO's in general. As a result of comments to the proposal, the applicability statement was modified to read "Safety belts approved prior to the date of this TSO may continue to be manufactured for an additional six months at which time they may no longer be manufactured under the provisions of their original approval." Subsequent to publication of the TSO, additional information was submitted to the FAA indicating an adverse economic impact of the restriction, even as modified. If the FAA had received this information prior to publication of the TSO, the restriction would have been deleted. Accordingly, the FAA has decided to remove this restriction and permit the manufacture of safety belts approved prior to the date of issuance of TSO–C22g.

Because this change relieves a restriction, the deletion of this requirement is made effective upon publication of this notice.

Issued in Washington, DC, on August 27, 1993.

John K. McGrath,
Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–21390 Filed 9–1–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0050.
Form Number: CF 3347 and CF 3347A.
Type of Review: Extension.
Title: Declaration of Owner of Merchandise Obtained (other than) in

Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by a Agent.

Description: CF 3347 and CF 3347A allows an agent to submit, subsequent to making entry, the declaration of the importer of record which is required by statute. Also, the CF 3347 and CF 3347A permits a nominal importer of record to file the declaration of the actual owner and be relieved of statutory liability for the payment of increased duties.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 950.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 570 hours.

Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21396 Filed 9–1–93; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New.

Form Number: CF 426 and CF 427.

Type of Review: New collection.

Title: Medical History Forms.

Description: These forms are used to determine medical history of persons applying for position that are considered arduous or hazardous. This information is provided to the physicians who conduct the physical examinations.

Respondents: Individuals or households.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting Burden: 525 hours.

Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, N.W., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21397 Filed 9–1–93; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review.

August 27, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0074.

Form Number: IRS Form 1040, Schedule D and Form 1040 Pay Voucher.

Type of Review: Resubmission.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 68,786,268.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1040 and 1040 payment voucher	Schedule D
Recordkeeping	3 hr., 8 min..	51 min.
Learning about the law or the form.	2 hr., 45 min..	43 min.
Preparing the form	3 hr., 45 min..	1 hr., 19 min.
Copying, assembling, and sending the form to the IRS.	53 min.	48 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,119,587,324 hours.

OMB Number: 1545–0188.

Form Number: IRS Form 4868.

Type of Review: Resubmission.

Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.

Description: Form 4868 is used by taxpayers to apply for an automatic four-month extension of time to file Form 1040, Form 1040A, or Form 1040EZ. This form contains data used by the IRS to determine if a taxpayer qualifies for the extension.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 5,572,999.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 minutes

Learning about the law or the form—13 minutes

Preparing the form—16 minutes

Copying, assembling, and sending the form to the IRS—20 minutes

Frequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 6,966,248 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, N.W. Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21398 Filed 9–1–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1993.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8841.

Type of Review: New collection.

Title: Deferral of Additional 1993 Taxes.

Description: Form 8841 will be used by individuals to compute their deferral of additional 1993 taxes (retroactive taxes). The information is needed to ensure that the taxpayer has figured his deferral amount correctly according to the law.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—46 minutes

Learning about the law or the form—6 minutes

Preparing the form—32 minutes

Copying, assembling, and sending the form to the IRS—20 minutes.

Frequency of Response: Other (once only, for 1993).

Estimated Total Reporting/ Recordkeeping Burden: 1,830,000 hours.

OMB Number: 1545–0191.

Form Number: IRS Form 4952.

Type of Review: Revision.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 minutes

Learning about the law or the form—15 minutes

Preparing the form—21 minutes

Copying, assembling, and sending the form to the IRS—10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 792,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21399 Filed 9–1–93; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 169
Thursday, September 2, 1993

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) September 14, 1993.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Report to the Commission: Office of General Counsel.
3. Extension of Management Directives 713 and 714 (Federal Sector Affirmative Employment) to October 1, 1994.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: August 31, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–21590 Filed 8–31–93; 2:23 pm]

BILLING CODE 6750–06–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 44401, August 20, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, August 25, 1993.

CHANGES IN THE MEETING: The following topic was added to the open portion of the meeting:

- Calculation of Area Median Income for Purposes of the Affordable Housing Program.

The following topic was moved from the closed portion of the meeting to the open portion of the meeting:

- System 2000.

Although the System 2000 topic was eligible for consideration in the closed session of the meeting pursuant to exemption (9)(B) in section 552b(c) of title 5 of the United States Code, the Board determined that the public interest would be best served if the topic was discussed in the open portion of the meeting.

The Board further determined that agency business required its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–21576 Filed 8–31–93; 2:41 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 7, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–21512 Filed 8–31–93; 9:25 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 8, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 31, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–21611 Filed 8–31–93; 3:55 pm]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 30, 1993.

A closed meeting will be held on Thursday, September 2, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday,

September 2, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Litigation Matter.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: August 31, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21602 Filed 8–31–93; 3:41 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 169
Thursday, September 2, 1993

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 THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program, Statutory and Regulatory Modifications

Correction

In proposed rule document 93-19351 beginning on page 42903 in the issue of Thursday, August 12, 1993, in the second column, in the **DATES** section, "September 6, 1993" is corrected to read "September 7, 1993."

BILLING CODE 1505-01-D

federal register

Thursday
September 2, 1993

Part II

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska; 1994–1995 Subsistence Taking of Wildlife; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska; 1994–1995 Subsistence Taking of Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1994–1995 regulatory year. This rule making is necessary because subpart D regulations require annual public review. When final, this rulemaking will replace hunting and trapping regulations in "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1993–1994 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 1994.

DATES: Written public comments and proposals to change this proposed rule will be accepted through October 14, 1993. Public meetings on this proposed rulemaking will be held from September 27–October 8, 1993, at the following locations in Alaska: Anchorage, Barrow, Bethel, Fairbanks, Galena, Kodiak, Kotzebue, Naknek, Nome, and Sitka. Written proposals to change subpart D regulations will be compiled and distributed for additional public review during the second week of November 1993. A second 60-day public comment period will follow distribution of the compiled proposal packet. Written public comments on distributed proposals will be accepted during the second public comment period. Oral comments on proposals to change subpart D regulations may be presented to the Federal Subsistence Board (Board) during a public meeting scheduled to be held in April 1994. At that meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

ADDRESSES: Written comments and proposals for changes to these proposed regulations may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Proposed Changes from 1993–1994 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Consequently, this proposed rule reflects regulation changes for the 1994–1995 regulatory year that are approved by the Board. Regulations contained in this proposed rule will take effect on July 1, 1994, unless elements are changed by subsequent Board action following the public review process outlined herein.

The text of the 1993–1994 subpart D final rule served as the foundation for the 1994–1995 subpart D proposed rule. Editorial changes and other modifications to the 1993–1994 final rule have been made to clarify and enhance Federal subsistence management program regulations for the 1994–1995 regulatory year. These include:

- Deletion of definition/classification for *fur animal.*
- New definitions of *designated hunter, harvest limit, hunting, marmot, ram,* and *trapping.*
- Deletion of fish and shellfish taking regulations.
- Modified methods and means restrictions associated with the taking of wildlife by hunting and trapping.
- Modified Unit tables to distinguish between hunting and trapping seasons, and harvest limits.
- Restriction on the use of hooks to take wildlife.
- Deletion of same-day-airborne regulations for taking of certain furbearers.
- Change in harvest limit restrictions of "bull" moose to "antlered bull" moose in certain Units.

Subpart D regulations were originally established from a framework of State of Alaska fish and game regulations. The 1993–1994 subpart D regulations were modified to remove certain provisions which have no Federal subsistence management application. Additional efforts to clarify the subsistence regulations are reflected in this proposed rule. The classification of *fur animal* has been removed, and regulations have been modified to clarify the methods, means, seasons, and harvest limits for trapping and hunting of furbearers. Moreover, *trapping* and *hunting* are defined, and the seasons and harvest limits for species taken relative to hunting and trapping methods and means are identified in the season tables for each Unit. In certain Units, moose harvest limits that were restricted to "bulls" have been modified to "antlered bulls" in an attempt to reduce take of cows or calf moose.

A same-day-airborne regulation that allowed the taking of arctic fox, red fox, coyote, and lynx, if over 100 feet from a landed aircraft has been removed. This regulation appears to be inconsistent with subsistence uses of these species and may promote violations of § ____.25(b)(1) (iv) and (v) found herein.

Subsistence Taking of Fish and Shellfish Regulations

This proposed rule contains no subsistence fishing or shellfish taking provisions. Subsistence fishing and shellfish regulations are presently being revised to conform with Federal regulatory authorities, and to simplify applicable area restrictions, methods, means, seasons, and harvest limits. In addition, the Board will propose to the Secretaries of the Interior and Agriculture that the regulatory year governing subsistence fish and shellfish taking activities be changed from the June 1–July 30 annual cycle to a January 1–December 31 cycle in order to provide more consistency during those months when fish and shellfish are most commonly harvested. The subsistence fish/shellfish revised regulations will be put forth in a separate proposed rule approximately November 1, 1993.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 100.1 to 100.24, remain effective and apply to this proposed rule for subpart D. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 100.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

Regulatory year which "means July 1 through June 30";

Federal Lands which "means lands and waters and interests therein title to which is in the United States"; and

Public land or *public lands* which "means lands situated in Alaska which are Federal lands, except—

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States Government.

Public Review Process—Regulation Comments, Proposals, and Public Meetings

Written comments or proposed regulation changes may be submitted in writing to the address identified at the beginning of this rulemaking by October 14, 1993. Comments or proposals may also be presented at public meetings to be held from September 27–October 8, 1993 in Anchorage, Barrow, Bethel, Fairbanks, Galena, Kodiak, Kotzebue, Naknek, Nome, and Sitka.

Proposals should be specific to subpart D regulations, including changes to subsistence seasons, harvest limits, and/or methods and means. Proposals submitted to the Board should include, at minimum, the following information:

a. The name, address, and telephone number of the individual or organization submitting the proposal;

b. The section and/or paragraph of the proposed rule for which the change is being suggested;

c. A statement explaining why the change is necessary;

d. A proposed solution;

e. Suggested wording for the regulation addition or change; and

f. Any supporting information.

Proposals which fail to include the above information, or proposals which are beyond the scope of authorities in subpart D, may be rejected. The public is encouraged to use standardized proposal forms to submit recommendations to the Board. Proposal forms may be obtained from the U.S. Fish and Wildlife Service at the address listed above.

Following public distribution of proposals for changes to the 1994–1995 proposed subpart D regulations, a second 60-day comment period will be provided to allow public review of those proposals that will be considered by the Board. A second series of public meetings will be held in February 1994, to assist in developing recommendations to the Board. Written comments on proposals may be submitted to the U.S. Fish and Wildlife Service before conclusion of the second comment period which is presently scheduled to end on January 21, 1994. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, April 11–15, 1994. The public may provide additional oral testimony on specific proposals before the Board at that time.

Federal Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is to be represented by a Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. Presently, the Councils are composed of no fewer than seven and no more than thirteen members who are residents of the region and are knowledgeable of local subsistence concerns. Charters for these councils were approved and signed by former Secretary Lujan on January 19, 1993.

An extensive recruitment effort for Council member nominations was conducted by personnel from each of the five Federal agencies responsible for subsistence management in Alaska. These efforts resulted in 260 applicants for 84 Council positions. The Board reviewed the list of applicants and submitted its recommendations for Council membership to the Offices of the Secretaries of Interior and Agriculture on June 4, 1993. The Board recommendations were made with due consideration of adequate geographical, cultural, and user diversity within each region. As specified in the Council charters, initial appointments will be staggered from one to three years. Subsequent appointments will carry 3-year terms. Appointment terms expire on December 2 of the appropriate year.

As of July 20, 1993, Secretarial appointments of Council members had not been made. The Board anticipates that the Councils will be operational in the near future, and once established, will have a substantial role in helping residents of the region review this proposed rule and make comments on it. If timely established, each Council will conduct the identified public meetings following publication of this proposed rule and/or those for review of regulation proposals. Moreover, the Council Chairs will be invited to represent their Council at the Board meeting in April 1994.

Conformance With Statutory and Regulatory Authorities

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average 0.1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed, if the Councils and Local Advisory Committees subject to the Federal Advisory Committee Act, are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rule making is not a "major rule" within the meaning of Executive Order 12291 and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rule making will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects," as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to provide for a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant taking implications related to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; John Hiscock, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA, Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and record keeping requirements, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, are amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR part 100 is revised to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In subpart D § _____.25 is revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

§ ___.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a licensed hunter who may take all or a portion of another licensed hunter(s) harvest limit(s) only under special seasons established to provide for such taking.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR § 100.17 and 36 CFR § 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in § ____.25(i).

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in § ____.25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife, including ptarmigan, grouse, hares, furbearers, ungulates, and bear may be taken for subsistence uses by any method, except as prohibited below or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this regulation. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by these regulations is prohibited.

(1) Except for special provisions found at § ____.25(k)(1) through (26), the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized vehicle, except from a motor-driven boat if the motor has been completely shut off, and the boat's progress from the motor's power has ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine.

(B) A muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, a conventional steel trap with a jaw spread over nine inches, or a conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use snares to take unclassified wildlife, ptarmigan, grouse, or hares; and individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞ inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at § ____.25(k)

(1) through (26). Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, or wolverine before 3 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at §____.25(b)(1):

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare;

(c) Possession and Transportation of Wildlife. (1) Except as specified in §____.25(c)(3)(ii) or (c)(4), or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total statewide take of that species has already been obtained under Federal and State regulations in other Units, or portions of other Units.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to §____.6(f)(3), an animal taken by an individual as part of a community harvest limit counts toward that individual's harvest limit for that species taken under Federal or State regulations for areas outside of the community harvest area.

(3) Individual harvest limits. (i) Harvest limits authorized by §____.25 and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to §____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with §____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with §____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, §____.25(c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, §____.25(c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, and black bears of all color phases taken in Units 1–6, 11–14, 16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area or the Northwest Alaska Brown Bear Management Area need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area or the Northwest Alaska Brown Bear Management Area which are not removed from the Management Area.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver lynx, marten, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in § ____.25(f) but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in § ____.25(f).

(h) Utilization of Wildlife. (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in § ____.25 do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit Regulations. Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at § ____.25(k) (1) through (26). Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at § ____.25(K) (1) through (26).

(1) Unit 1. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the

latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In the following areas, the trapping of furbearers for subsistence uses is prohibited on public lands:

(A) Glacier Bay National Park;

(B) Unit 1(C), Juneau area:

(*1*) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(*2*) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(*3*) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(*4*) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations;

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Brown Bear:	
1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 31.
Deer:	
Unit 1(A)—4 antlered deer.	Aug. 1 to Dec. 31.
Unit 1(B)—2 antlered deer.	Aug. 1 to Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15 to Dec. 31.	Aug. 1 to Dec. 31. Aug. 1 to Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only.	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited. Federal permits may be obtained from U.S. Forest Service offices in Petersburg and Wrangell.	Aug. 1 to Dec. 31.
Unit 1(B)—that portion south of Bradfield Canal, east of Ernest Sound, west of Anan Creek/Anan Lake/Boulder Lake drainage, and north of Frosty Creek. Public lands are closed to goat hunting.	No open season.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only.	Aug. 1 to Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1 to Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only.	Aug. 1 to Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15 to Nov. 30.
Remainder of Unit 1(D)—1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull.	Sept. 15 to Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers (or 3 brow tines on either antler), by Federal registration permit only. Public lands are closed to the taking of moose, except by qualified rural residents who have obtained a Federal registration permit. Public lands within the Stikine River drainage are closed, except to Wrangell residents.	Sept. 15 to Oct. 15.
Remainder of Unit 1(B).	No open season.
Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only.	Sept. 15 to Oct. 15.
Unit 1(D)	No open season.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Unit 1 (A), (B), and (C)—No limit.	Dec. 1 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
No limit	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(2) Unit 2. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(ii) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Deer:	
4 antlered deer	Aug. 1 to Dec. 31.
Coyote:	
2 coyotes.	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
No limit	Dec. 1 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
No limit	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(3) Unit 3.

(i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15 to Oct. 31.
Remainder of Unit 3—2 antlered deer.	Aug. 1 to Nov. 30.
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antler (or 3 brow tines on either antler).	Oct. 1 to Oct. 15.
Remainder of Unit 3	No open season.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10—Feb. 15
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Unit 3—Mitkof Island No limit.	Dec. 1 to Apr 15.
Unit 3—except Mitkof Island.	
No limit	Dec. 1 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
No limit	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(4) Unit 4.

(i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Idaho Inlet and north of Trail River, and north of a line from the headwaters of Trail River to the head of Tenakee Inlet is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations;

(A) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58 °N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15 to May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 20.
Deer:	
Unit 4—All drainages of Chichagof Island west of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to Point Leo. This includes all drainages into Slocum Arm, Lisianski Inlet, Idaho Inlet, and all offshore islands including the Inian Islands. Lemesurier Island is excluded. All of Admiralty Island and its associated offshore islands that lie within Unit 4. That portion of Baranof Island south of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay—6 deer; however, antlerless deer may be taken only from Sept. 15 to Jan. 31.	Aug. 1 to Jan. 31.
Unit 4—All drainages of Chichagof Island east of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to the divide between Trail River and Upper Tenakee Inlet and including all drainages into Tenakee Inlet and into Chatham Straits north of the Kook Lake drainage. Lemesurier, Pleasant, and associated offshore islands are included—6 deer; however, antlerless deer may be taken only from Sept. 15 to Jan 31. Public lands are closed to the taking of deer beginning Nov. 1, except for residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection or Wrangell.	Aug. 1 to Jan. 31.

Harvest limits	Open season
Unit 4—All drainages of Baranof Island extending north of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay; and all drainages on Chichagof Island draining into Peril Straits, Hoonah Sound, and Salisbury Sound east of Point Leo, and all offshore islands including Kruzof, Biorka, and Catherine—4 deer; however, antlerless deer may be taken only from Sept. 15 to Dec. 31. Public lands are closed to the taking of deer by persons who are not residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell.	Aug. 1 to Dec. 31.
Goat:	
1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit.	Dec. 1 to May 15.
Remainder of Unit 4	No open season.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
Unit 4—that portion within the NECCUA—No limit. Marten trapping on public lands within the NECCUA is prohibited, except by rural Alaska residents.	Dec. 1 to Dec. 31.
Remainder of Unit 4—No limit.	Dec. 1 to Feb. 15.
Mink and Weasel:	
Unit 4 that portion within the NECCUA—No limit. The taking of mink and weasel on public lands within the NECCUA is prohibited, except to rural Alaska residents.	Dec. 1 to Dec. 31.
Remainder of Unit 4—No limit.	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(5) Unit 5.

(i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1 to May 31.
Deer:	
Unit 5(A)—1 buck.	
Unit 5(B)	Nov. 1 to Nov. 30. No open season.
Goat:	
1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Moose:	
Unit 5(A), except Nunatak Bench—1 antlered bull by State registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15 to Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 15 to Nov 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1 to Dec. 15.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day.	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15
Wolf:	
5 wolves	Aug. 1 to Apr. 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
No limit	Nov. 10 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Dec. 1 to Feb. 15.
Lynx:	

Harvest limits	Open season
2 lynx	Dec. 1 to Feb. 15.
Marten:	
No limit	Nov. 10 to Feb. 15.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Nov. 10 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(6) Unit 6.

(i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting:	
Black Bear:	
1 bear	Sept. 1 to June 30.
Deer:	
4 deer; however, antlerless deer may be taken only from Nov. 1 to Dec. 31.	Aug. 1 to Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only.	Aug. 20 to Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG243, RG224, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. Federal permits may be obtained from the U.S. Forest Service office in Cordova. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—2 goats, RG224—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	Aug. 20 to Jan. 31.
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands.	No open season.
Coyote:	
Unit 6(A) and (D)—2 coyotes.	Sept. 1 to Apr. 30.
Unit 6(B)—No limit	July 1 to June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	July 1 to June 30.
Remainder of Unit 6(C)—No limit.	July 1 to June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15 to Jan. 15.
Wolf:	
2 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Trapping—20 beaver per season.	Dec. 1 to Mar. 31.
Coyote:	
Unit 6(A), (B) and (D)—No limit.	Nov. 10 to Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	Nov. 10 to Apr. 30.
Remainder of Unit 6(C)—No limit.	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(7) Unit 7.

(i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10 to Apr. 30.

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 7—3 bears	July 1 to June 30.
Coyote:	
No limit	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Wolf:	
1 wolf	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1 to Mar. 31.
Coyote:	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to May 15.
Otter:	
No limit	Nov. 10 to Feb. 28.
Wolf:	
No limit	Nov. 10 to Feb. 28.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

Harvest limits	Open season
Hunting:	
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57°52′ N. lat., 152°58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25 to Oct. 31.	Aug. 1 to Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1 to Dec. 31.	Aug. 1 to Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1 to Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1 to Nov. 30.	Aug. 1 to Dec. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Mar. 31.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Mar. 31.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Jan. 31.

(9) Unit 9

(i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1 to Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	

Harvest limits	Open season
Unit 9(B)—1 bear every four regulatory years.	Oct. 1 to Oct. 21 (odd years only); May 10 to May 25 (even years only).
Unit 9(E)—1 bear by Federal registration permit only.	Oct. 1 to Dec. 31; May 10 to May 25.
Caribou:	
Unit 9(A), (B), and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10 to Mar. 31.
Unit 9(D)—1 bull. Public lands are closed to the hunting of caribou except by rural Alaska residents of Unit 9(D) and False Pass.	Aug. 10 to Sept. 30; Dec. 1 to Mar. 31.
Unit 9(E)—that portion south of Seal Cape on the Pacific side of the Alaska Peninsula divide—4 caribou; only bulls may be taken between July 1 and Aug. 9.	July 1 to Apr. 30.
Remainder of Unit 9(E)—4 caribou.	Aug. 10 to Apr. 30.
Sheep:	
1 ram with 7/8 curl horn.	Aug. 10 to Sept. 20.
Moose:	
Unit 9(A)—1 antlered bull.	Sept. 1 to Sept. 15.
Unit 9(B)—1 antlered bull.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull. The December hunt will be by Federal registration permit only.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Unit 9(E)—1 antlered bull.	Sept. 1 to Sept. 20; Dec. 1 to Dec. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White):	
No limit	Dec. 1 to Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 10 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
40 beaver per season.	Jan. 1 to Mar. 31.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White):	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Nov. 10 to Feb. 28.
Marten:	
No limit	Nov. 10 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 28.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(10) Unit 10.

(i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting:	
Caribou:	
Unit 10—Unimak Island only—1 bull. Public lands are closed to the hunting of caribou except by rural Alaska residents of False Pass.	Aug. 10 to Sept. 30; Dec. 1 to Mar. 31.
Remainder of Unit 10—No limit.	July 1 to June 30.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1 to June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Wolf:	
2 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1 to June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 28.
Muskrat:	
No limit	Nov. 10 to June 10.

Harvest limits	Open season
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(11) Unit 11. Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

(ii) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou	No open season.
Sheep:	
1 sheep	Aug. 10 to Sept. 20.
Moose:	
1 antlered bull	Aug. 25 to Sept. 20.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15. to Jan. 15.
Wolf:	
5 wolves	Aug. 10 to Apr. 30
Wolverine:	
1 wolverine	Sept. 1 to Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents.	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
2 wolverine	Nov. 10 to Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents.	

(12) Unit 12. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Units 12 during March, April or October with a steel trap, or with a snare smaller than 3X, is prohibited.

(ii) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Remainder of Unit 12—1 bull.	Sept. 1 to Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Federal Subsistence Board.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers east of the Tetlin Reservation boundary and north of the Winter Trail from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1 to Sept. 15; Nov. 20 to Nov. 30.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1 to Sept. 30.
Unit 12—Remainder—1 antlered bull.	Sept. 1 to Sept. 15.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Jan. 31.
Wolf:	
5 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
15 beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
No limit	Nov. 1 to Jan. 31.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Sept. 20 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.

Harvest limits	Open season
Wolf:	
No limit	Oct. 1 to Apr. 30.
Wolverine:	
No limit	Nov. 1 to Feb. 28.

(13) Unit 13.

(i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by § ____.25(k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10 to Sept. 20, Jan. 5 to Mar. 31.
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn.	Aug. 10 to Sept. 20.
Moose:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 25 to Sep. 20.
Coyote:	
2 coyotes	Sept. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15 to Jan. 15.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine. Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents.	Sept. 1 to Jan. 31.

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
2 wolverine. Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents.	Nov. 10 to Jan. 31.

(14) Unit 14.

(i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) the Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is restricted to the subsistence taking of ungulates, bear, wolves, or wolverine by permit only;

(B) the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) In Unit 14(B), bait may be used to hunt black bear between April 15 and May 31.

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 14 (A) and (C)—1 bear.	July 1 to June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years.	Sept. 15 to Oct. 10. May 1 to May 25.
Coyote:	
Unit 14 (A) and (C)—2 coyotes.	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day.	July 1 to June 30.
Unit 14(C)—5 hares per day.	Sept. 8 to Apr. 30.
Lynx:	
2 lynx	Dec. 15 to Jan. 15.
Wolf:	
Unit 14(A)—4 wolves	Aug. 10 to Apr. 30.
Unit 14(C)—1 wolf	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Unit 14(C)—5 per day, 10 in possession.	Sept. 8 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession.	Aug. 10 to Mar. 31.
Unit 14(C)—10 per day, 20 in possession.	Sept. 8 to Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
Unit 14(A)—30 beaver per season.	Nov. 10 to Apr. 30.
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1 to Apr. 15.
Coyote:	
Unit 14(A)—No limit	Nov. 10 to Mar. 31.
Unit 14(C)—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10 to Feb. 28.
Unit 14(C)—1 fox	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10 to Mar. 31.
Unit 14(C)—No limit	Nov. 10 to Feb. 28.
Wolf:	
Unit 14(A)—No limit	Nov. 10 to Mar. 31.
Unit 14(C)—No limit	Nov. 10 to Feb. 28.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(15) Unit 15.

(i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning

at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and ptarmigan may be taken only from October 1 to March 1 by bow and arrow only;

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Coyote:	
No limit	Sept. 1 to Apr. 30.
Hare (Snowshoe and Tundra):	
No limit.	July 1 to June 30.
Wolf:	
1 Wolf	Aug. 10 to Apr. 30.
Wolverine:	
1 Wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Unit 15(C)—20 per day, 40 in possession.	Aug. 10 to Dec. 31.
Unit 15(C)—5 per day, 10 in possession.	Jan. 1 to Mar. 31.
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1 to Mar. 31.
Coyote:	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
1 Fox	Nov. 10 to Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier.	No open season.
Remainder of Unit 15—No limit.	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to May 15.
Otter:	
Unit 15(A), (B)—No limit.	Nov. 10 to Jan. 31.
Unit 15(C)—No limit	Nov. 10 to Feb. 28.
Wolf:	
No limit	Nov. 10 to Feb. 28.
Wolverine:	
Unit 15(B) and (C)—No limit.	Nov. 10 to Feb. 28.

(16) Unit 16.

(i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by §____.25(k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
1 caribou	Aug. 10 to Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1 to Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25 to Sept. 30 and from Dec. 1 to Feb. 28 by Federal registration permit only.	Sept. 1 to Sept. 30 Dec. 1 to Feb. 28.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15 to Jan 15.
Wolf:	
4 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(17) Unit 17.

(i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points

including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchik Lake—1 bear.	Sept. 1 to May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years.	Sept. 20 to Oct. 10. May 10 to May 25.
Unit 17(C)—1 bear every four regulatory years.	Sept. 10 to Oct. 10. Apr. 10 to May 25.
Caribou: Unit 17 (B) and (C)—that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10 to Aug. 31, and no more than 1 caribou may be taken Sept. 1 to Nov. 30.	Aug. 10 to Mar. 31.
Sheep:	
1 ram with full curl horn or larger.	Aug. 10 to Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 antlered bull.	Sept. 1 to Sept. 20.
Remainder of Unit 17(B)—1 antlered bull; however, during the period Aug. 20 to Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20 to Sept. 20. Dec. 1 to Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 antlered bull; however, during the period Aug. 20 to Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20 to Sept. 15.
Remainder of Unit 17(C)—1 antlered bull; however, during the period Aug. 20 to Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20 to Sept. 15. Dec. 1 to Dec. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	Dec. 1 to Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 10 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 17(A)—20 beaver per season.	Jan. 1 to Jan. 31.
Unit 17 (B) and (C)—20 beaver per season.	Jan. 1 to Feb. 28.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Nov. 10 to Feb. 28.
Marten:	
No limit	Nov. 10 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 28.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(18) Unit 18.

(i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or

ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
1 bear	Sept 1 to May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The taking of caribou will be prohibited when a total unit harvest of 130 bulls has been reached in either or both hunts administered by the Federal Subsistence Board or ADF&G.	Dec. 15 to Jan. 9. Feb. 23 to Mar. 15.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage; and those portions contained in the Kanektok and Goodnews drainages. Remainder of Unit 18—1 antlered moose. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	No open season. Sept. 1 to Sept. 30 Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag.	
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 10 to Mar. 31.
Wolf:	
4 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to May 30.
Trapping:	
Beaver:	
No limit	Nov. 1 to June 10.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Mar. 31.
Lynx:	
No limit	Nov. 10 to Mar. 31.
Marten:	
No limit	Nov. 10 to Mar. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Aug. 10 to Apr. 30. Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Mar. 31.

(19) Unit 19.

(i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50' W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 19(A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear.	Sept. 1 to May 31.
Remainder of Unit 19(A), (B), and (D)—1 bear every four regulatory years.	Sept. 10 to May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou.	Aug. 10 to Sept. 30. Nov. 1 to Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—4 caribou.	Aug. 10 to Mar. 31.
Unit 19(C)—1 caribou	Aug. 10 to Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Nov. 1 to Jan. 31.
Remainder of Unit 19(D)—1 caribou.	Aug. 10 to Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1 to Aug. 9.	July 1 to June 30.
Sheep:	
1 ram with 7/8 curl	Aug. 10 to Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose; either sex.	July 1 to June 30.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Jan. 1 to Jan. 10 and Feb. 1 to Feb. 5.	Sept. 5 to Sept. 25. Jan. 1 to Jan. 10. Feb. 1 to Feb. 5.
Unit 19(B)—1 antlered bull.	Sept. 1 to Sept. 30.
Unit 19(C)—1 antlered bull.	Sept. 1 to Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1 to Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1 to Sept. 30. Dec. 1 to Feb. 28.
Remainder of Unit 19(D)—1 antlered bull.	Sept. 1 to Sept. 30. Dec. 1 to Dec. 15.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov 1. to Mar. 31.
Lynx:	
No limit	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Mar. 31.

(20) Unit 20.

(i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and

downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River:

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision OSE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only;

(G) The Ferry Trail Management Area, which consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X, is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 20(E)—that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstuck Creek—1 caribou.	Aug. 10 to Sep 30. Dec. 1 to Feb. 28.
Unit 20(E)—Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails, as described in the permit—1 caribou by Federal registration permit only; however, only bulls may be taken prior to Dec. 1.	Aug. 10 to Sept. 30. Dec. 1 to Feb. 28.
Unit 20(F)—South of the Yukon River and west of the Dalton Highway—1 bull.	Aug. 10 to Sept. 20.
Unit 20(F)—Toziltna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10—Sept. 30.	Aug. 10 to Sept. 30. Nov. 26 to Dec. 10. Mar. 1 to Mar. 15.
Remainder of Unit 20(F)—1 bull.	Aug. 10 to Sept. 30.
Moose:	
Unit 20(A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers.	Sept. 1 to Sept. 20.
Remainder of Unit 20(A)—1 antlered bull.	Sept. 1 to Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only.	Sept. 1 to Sept. 20. Jan. 10 to Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1 to Sept. 20.
Remainder of Unit 20(B)—1 antlered bull.	Sept. 1 to Sept. 20.
Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1 to Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1 to Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5 to Sept. 25.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1 to Sept. 25.
Remainder of Unit 20(F)—1 antlered bull.	Sept. 1 to Sept. 25.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit.	July 1 to June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1 to Jan. 31.
Remainder of Unit 20—2 lynx.	Dec. 1 to Jan. 31.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25 to Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 20(A)—25 beaver.	Nov. 1 to Apr. 15.
Unit 20(B), Unit 20(C), and Unit 20(E)—25 beaver.	Nov. 1 to Apr. 15.
Unit 20(D)—15 beaver.	Feb. 1 to Apr. 15.
Unit 20(F)—50 beaver.	Nov. 1 to Apr 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1 to Feb. 28.
Remainder Unit 20—No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
Unit 20(E)—No limit	Nov. 1 to Jan. 31.
Remainder Unit 20—No limit.	Dec. 1 to Jan. 31.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20 to June 10.
Remainder of Unit 20—No limit.	Nov. 1 to June 10.

Harvest limits	Open season
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1 to Apr. 30.
Remainder of Unit 20—No limit.	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Feb. 28.

(21) Unit 21.

(i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1—June 1.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 21(A), (B), (C), and (E)—1 caribou.	Aug. 10 to Sept. 30.
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10 to Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30..	July 1 to June 30.
Moose:	
Unit 21(A)—1 antlered bull.	Sept. 5 to Sept. 30. Nov. 1 to Nov. 30.
Unit 21(B) and (C)—1 antlered bull.	Sept. to 5 to Sept. 25.
Unit 21(D)—that portion of the Koyukuk Controlled Use Area within the boundary of the Koyukuk National Wildlife Refuge, 1 moose; however, antlerless moose may be taken only from Sept. 21—Sept. 25 and Feb. 1—Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 1 to Sept. 25. Feb. 1 to Feb. 5.
Unit 21(D)—Remainder—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5. Moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5 to Sept. 25. Feb. 1 to Feb. 5.
Unit 21(E)—1 moose; however, only antlered bulls may be taken from Sept. 5–Sept. 25.	Sept. 5 to Sept. 25. Feb. 1 to Feb. 10.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Feb. 28.

Harvest limits	Open season
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 21(E)—No Limit	Nov. 1 to June 1.
Remainder of Unit 21—No Limit	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
No limit	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Mar. 31.

(22) Unit 22.

(i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations;

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 22 (C)—1 bear every four regulatory years.	Sept. 1 to Oct. 31. May 10 to May 25.
Remainder of Unit 22—1 bear every four regulatory years.	Sept. 1 to Oct. 31. Apr. 15 to May 25.
Caribou:	
Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Moose:	
Unit 22(A)—1 antlered bull.	Aug. 1 to Sept. 30. Dec. 1 to Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1 to Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Jan. 31.
Unit 22(C)—1 antlered bull.	Sept. 1 to Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Aug. 1 to Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1 to Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Apr. 15.
Wolf:	
No limit	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 22(A) and (B)—50 beaver.	Nov. 1 to June 10.
Unit 22(C), (D), and (E)—50 beaver.	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Apr. 15.
Lynx:	
No limit	Nov. 1 to Apr. 15.
Marten:	
No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
No limit	Nov. 1 to Jan. 31.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Apr. 15.
Wolverine:	
No limit	Nov. 1 to Apr. 15.

(23) Unit 23.

(i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20—September 20 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in

lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats or snowmobiles may be used to take caribou;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1 to Jun. 10.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear.	Sept. 1 to May 31.
Remainder of Unit 23—1 bear every four regulatory years.	Sept. 1 to Oct. 10. Apr. 15 to May 25.
Caribou:	
5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Sheep:	
Unit 23—that portion south and east of the Noatak River, excluding Gates of the Arctic National Park, 1 ram with 7/8 curl horn or larger. A Federal registration permit is required. A harvest quota will be announced before the permit hunt.	Aug. 10 to Sept. 20.
Unit 23—that portion south and east of the Noatak River, excluding Gates of the Arctic National Park, 1 sheep. The hunt will be closed when 30 sheep have been taken. From Oct. 1 to Apr. 30, public lands will be closed to the taking of sheep, except by rural Alaska residents of Unit 23 living north of the Arctic Circle.	Oct. 1 to Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Kivalina River drainage—1 moose; no person may take a cow accompanied by a calf.	July 1 to Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1 to Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare: (Snowshoe and Tundra)	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 1 to Jan. 15.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver.	Nov. 1 to June 10.
Remainder of Unit 23—30 beaver.	Nov. 1 to June 10.
Coyote:	
No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Apr. 15.
Lynx:	
3 lynx	Dec. 1 to Jan. 15.
Marten:	
No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
No limit	Nov. 1 to Jan. 31.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Apr. 15.
Wolverine:	
No limit	Nov. 1 to Apr. 15.

(24) Unit 24.

(i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose,

including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear.	Sept. 1 to May 31.
Remainder of Unit 24—1 bear every four regulatory year..	Sept. 1 to May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10 to Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1 to Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10 to Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger.	Aug. 10 to Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21 to Sept. 25, Dec. 1 to Dec. 10, and Mar. 1 to Mar. 10.	Sept. 5 to Sept. 25. Dec. 1 to Dec. 10. Mar. 1 to Mar. 10.
Unit 24—that portion that includes the John River drainage upstream from, but excluding the Hunt Fork drainage—1 moose.	Aug. 1 to Dec. 31.
Unit 24—the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21 to Sept. 25 and Mar. 1 to Mar. 10.	Aug. 25 to Sept. 25. Mar. 1 to Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25 to Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25 to Sept. 25.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
No limit	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Mar. 31.

(25) Unit 25.

(i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(B) The Arctic Village Sheep Management Area, which encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1 to Apr. 30.
Unit 25(C)—1 bull	Aug. 10 to Sept. 20. Feb. 15 to Mar. 15.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10 to Sept. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area—3 sheep by Federal registration permit only; the Aug. 10—Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger.	Oct. 1 to Apr. 30. Aug. 10 to Sept. 20.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.	Aug. 10 to Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only.	Aug. 10 to Apr. 30.
Moose:	
Unit 25(A)—that portion within the Dalton Highway Management Area—1 antlered bull by Federal registration permit only.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 10.
Remainder of Unit 25(A)—1 antlered bull.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25 to Sept. 30. Dec. 1 to Dec. 10.

Harvest limits	Open season
Remainder of Unit 25(B)—1 antlered bull.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 15.
Unit 25(C)—1 antlered bull.	Sept. 1 to Sept. 15.
Unit 25(D) (West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 antlered bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D) (West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 antlered moose have been harvested in the entirety of Unit 25(D) (West).	Aug. 25 to Sept. 25. Nov. 1 to Dec. 20.
Remainder of Unit 25(D)—1 antlered moose.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 20.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1 to Jan. 31.
Remainder of Unit 25—2 lynx.	Nov. 1 to Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10 to Apr. 30.
Remainder of Unit 25—10 wolves.	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 25(C)—25 beaver.	Nov. 1 to Apr. 15.
Remainder of Unit 25—50 beaver.	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
Unit 25(C)—No limit	Dec. 1 to Jan. 31.
Remainder of Unit 25—No limit.	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1 to Feb. 28.
Remainder of Unit 25—No limit..	Nov. 1 to Mar. 31.

(26) Unit 26.

(i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1—Aug. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area,

and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

Harvest limits	Open season
Hunting:	
Black Bear: 3 bears	July to June 30.
Brown Bear:	
Unit 26(A)—1 bear	Sept. 1 to May 31.
Remainder of Unit 26—1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1 to June 30.
Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1–Apr. 30.	July 1 to June 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year.	July 1 to Apr. 30.
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1 to Apr. 30.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10 to Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10 to Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season, except for residents of the City of Kaktovik. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter. Procedures for Federal permit issuance and community reporting will be mutually developed by Kaktovik and Federal representatives prior to the season opening.	Aug. 10 to Sept. 20. Oct. 1 to Apr. 30.
Moose:	
Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1 to Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26(B) Remainder and (C)—1 moose.	Aug. 1 to Dec. 31.
Musk Oxen: Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik.	Oct. 1 to Oct. 31. Mar. 1 to Mar. 31.
Coyote: 2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes.	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Unit 26(C)—10 foxes	Nov. 1 to Apr 15.
Hare (Snowshoe and Tundra): No limit.	July 1 to June 30.
Lynx: 2 Lynx	Nov. 1 to Apr. 15.
Wolf: No limit	Aug. 10 to Apr. 30.
Wolverine: 1 wolverine	Sept 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Coyote: No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase): No limit.	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit.	Nov. 1 to Apr. 15.
Lynx: No limit	Nov. 1 to Apr. 15.
Marten: No limit	Nov. 1 to Apr. 15.
Mink and Weasel: No limit	Nov. 1 to Jan. 31.
Muskrat: No limit	Nov. 1 to June 10.
Otter: No limit	Nov. 1 to Apr. 15.
Wolf: No limit	Nov. 1 to Apr. 15.
Wolverine: No limit	Nov. 1 to Apr. 15.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

[FR Doc. 93–21154 Filed 9–1–93; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

federal register

Thursday
September 2, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Petition for Acknowledgment of Existence as an Indian Tribe; Chukchansi Yokotch Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Chukchansi Yokotch Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Chukchansi Yokotch Tribe, c/o Ms. Lynda L. Appling, 4962 Watt Road, Mariposa, California 95338–9743, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on May 25, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–21317 Filed 9–1–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
September 2, 1993

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization Program; Proposed Funding Priority; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization Program Proposed Funding Priority

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before October 1, 1993.

ADDRESSES: All comments concerning these proposed priority should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority under the D&U program and additional selection criteria for this proposed priority. The proposed priority would develop and test new informational and instructional materials related to the communication requirements of the Americans with Disabilities Act (ADA).

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(5) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations.

This proposed priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priority by reserving funds to support particular research activities.

The Secretary will announce the final funding priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing an additional priority, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this program only applications that meet this absolute priority:

Proposed Priority—Materials Development to Facilitate Accessibility in Communications

Background

Public Law 101–336, the Americans with Disabilities Act (ADA), was enacted on July 26, 1990, and prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. This announcement focuses on access for people with communication disabilities.

Although there are no existing data on the prevalence of communication impairments on a national level, the population is significant ("A Report of the Task Force on the National Strategic Research Plan," National Institute on Deafness and Other Communication Disorders (NIDCD), 1989). For example, at least 28 million citizens have some degree of hearing loss, while over 2 million are profoundly deaf. Another 1.75 million have severe speech impairment (NIDCD, 1989). Individuals with vision impairments, cognitive impairments, and motor impairments are also impeded in their abilities to use a full range of existing methods of communications, such as public transportation signs and announcements, automated teller machines, and telephones.

In appropriating funds for NIDRR for fiscal year 1991, Congress instructed NIDRR to initiate a program of technical assistance to facilitate the implementation of the ADA. NIDRR established this initiative by funding ten Regional Disability and Business Technical Assistance Centers (RDBTACs), two national peer training projects, and three projects for materials development—two focused on employment and one focused on public accommodations. NIDRR attempted to establish a materials development project to focus on the accessible communications requirements of the Act, but did not receive acceptable applications for that project. However, NIDRR's subsequent experience with the ADA has reinforced the need for materials and technical assistance and training activities to make those with responsibilities and those with rights under the ADA aware of their rights and duties, and aware of the nature of communications barriers and of potential solutions.

Successful implementation of the ADA for persons with communication disabilities will depend, in part, on the extent to which obstacles to community integration caused by communication barriers can be identified and solutions developed and disseminated. These include not only technical solutions, but also non-technical aids for individuals who require basic terminology, short sentences, pictograms, repetition, and other techniques, to facilitate better integration into the community. The identification of significant barriers and of acceptable solutions must involve individuals with a range of communication disabilities. The target audiences for the materials developed by this project will be the RDBTACs funded by NIDRR, individuals with communication disabilities, employers, public and private operators of public accommodations, State and local governments, public and private service providers, communications industries, and regulators of communications industries.

An applicant for an award under this priority must demonstrate how the proposed activities will address the needs of individuals with disabilities who are from minority backgrounds. This is expected to include issues of language and preferred communications media, and is expected to be reflected in the proposed technical assistance and training, the target populations for dissemination, and the accessibility of the formats of the materials.

Proposed Priority

A materials development project to facilitate accessibility in communications shall—

• Identify useful newly available technology and develop consumer-run orientation programs to inform consumers about new technology;

• Identify needs based on the requirements of the ADA for information about technology and services, and develop materials to educate employers, operators of public accommodations, State and local government officials, public and private service providers, and the communication industries;

• Develop materials that explain the rights of individuals with communication disabilities and the responsibilities of covered entities established under the ADA, and disseminate these materials in accessible formats to the RDBTACs and to other relevant parties;

• Develop practical information on appropriate technologies and services that can be used in different kinds of settings where compliance with the ADA is required;

• Develop innovative methods of information exchange and new materials that illustrate solutions to problems experienced by people with various types of communication disabilities, and make these available to RDBTACs and other relevant parties;

• Develop, test, and evaluate training modules that demonstrate the appropriate use of the latest technology in telecommunication and other communication methods for meeting the communication requirements of the ADA and make these modules, along with technical assistance, available to the RDBTACs and other relevant parties;

• Coordinate with the Federal Communications Commission, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation and the Architectural and Transportation Barrier Compliance Board in the development and dissemination of materials;

• Establish and maintain liaison with researchers and providers concerned with communication devices and services, in order to disseminate consumer perspectives and to encourage the introduction of new and responsive technology; and

• Develop its materials, including brochures, publications and instructional materials, in formats that will adequately accommodate various individual communication modes.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR Part 355, apply to this priority. However, because of the specialized nature of these activities and the potential importance of this project to the successful implementation of the ADA, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under this priority will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in section 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(a) The applicant proposes an effective approach to the timely development and production of materials and instructional content in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(b) The applicant presents an effective plan to pilot test, and evaluate and modify as needed, materials and training programs on appropriate target audiences, including individuals who have various types of disabilities and parents of individuals with disabilities, employers with various sized work forces, and appropriate representatives of service providers, business, labor, State and local governments, and the general public. (Weight: 4; Total Points: 20)

(c) The applicant involves individuals with disabilities, parents or other family members of individuals with disabilities, as well as representatives of the covered entities and other target populations, in the design and delivery of the informational and instructional content and format. (Weight: 4; Total Points: 20) (Approved by the Office of Management and Budget under Control Number 1820–0027)

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3423, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: August 26, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–21319 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
September 2, 1993

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Research and Demonstration Projects; Proposed Funding Priorities; Notice

DEPARTMENT OF EDUCATION

4000–01–P

National Institute on Disability and Rehabilitation Research; Research and Demonstration Project, Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1994 and 1995 for research and demonstration projects.

SUMMARY: The Secretary proposes funding priorities for Research and Demonstration (R&D) projects under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and address problems encountered by individuals with disabilities in their daily activities.

DATES: Comments must be received on or before October 1, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains two proposed priorities for the R&D program. These proposed priorities focus on (1) the rehabilitation of migrant workers, and (2) community planning and education to facilitate the implementation of the Americans with Disabilities Act (ADA). Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and organizations and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to assist in the provision of vocational and other rehabilitation services through planning and conducting of research and demonstrations. It is also designed to assist in the development of solutions to the problems encountered by individuals with handicaps in their daily activities (see 34 CFR 351.1). Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

These proposed priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this program only applications that meet one of these absolute priorities:

Proposed Priority 1—Rehabilitation of Migrant and Seasonal Farmworkers with Disabilities

Background

Estimates of the national population of migrant and seasonal farmworkers (MSFW) vary widely, ranging from low estimates on the order of 1.3 million persons to high estimates of approximately 6 million persons. The divergence is, in part, definitional as the higher estimates tend to include more casual hired farm labor, farm owners, and workers in agriculturally-related industries.

Migrant and seasonal farmworkers experience higher rates of orthopedic disabilities, tuberculosis, intestinal parasitic infestation, influenza, pneumonia, gastrointestinal diseases, and skin diseases than the national average. They are also at high risk for accidents and pesticide exposure (Dever and Alan, "Migrant Health Status: Profile of a Population with Complex Health Problems," National Migrant Resource Program, Inc., Austin, TX, 1991). A 1974 survey of Texas farmworkers indicated that 37 percent of respondents reported back pain of some sort and 44 percent found it impossible or extremely difficult to stoop, bend, or kneel (Cortes, "Handicapped Migrant Farm Workers," Interstate Research Associates, Washington, DC, December, 1974). A slightly lower proportion, 34 percent, found it difficult to lift or carry weights of ten pounds or to remain standing for long periods. More recent data on the disability status of MSFW are needed.

Approximately half (52 percent) of the MSFW who apply for State vocational rehabilitation services are accepted for service, slightly less than the Rehabilitation Services Administration (RSA) national rate of acceptance of 60 percent for all categories of applicants (Final Report: Contract #300–85–0134, "The Vocational Rehabilitation of Migrant and Seasonal Farmworkers," U.S. Department of Education, Rehabilitation Services Administration, Department of Education, 1987).

Proposed Priority

An R&D project on rehabilitation of migrant and seasonal farmworkers shall—

- Determine the incidence, prevalence, and demographic distribution of disability among MSFW, levels of employment and unemployment for MSFW with disabilities, and identify patterns of rehabilitation service use;
- Identify barriers to service delivery as a basis for designing improved models of rehabilitation service delivery;
- Identify rehabilitation service needs of MSFW with disabilities, including needs for coordination with school systems and State education agencies to improve transition services for students receiving special and regular education;
- Coordinate with the RSA evaluation of the status of MSFW within the State vocational rehabilitation service system; and
- Identify future research needs related to MSFW with disabilities and the training needs of professionals providing vocational rehabilitation services to MSFW.

Proposed Priority 2—Community Planning and Education to Further the Implementation of the Americans With Disabilities Act

Background

The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. Successfully implementing the ADA requires the identification and removal of physical, attitudinal, policy, procedural and communication barriers to equal opportunity for persons with disabilities throughout the public and private sectors of the community.

Community Planning

Title II of the ADA prohibits discrimination on the basis of disability in State and local government programs and activities. (See 28 CFR part 35). It requires each State and local government to "provide effective communications and to evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of [Title II] and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications." These self-evaluations were to be completed by January 26, 1993. Further, Title II requires all new construction and alteration of facilities to be accessible.

Title III of the ADA prohibits private entities such as schools, restaurants, hotels, retail stores and service establishments from discriminating against individuals with disabilities and requires the removal of physical barriers in existing facilities, if removal is readily achievable. If removal of physical barriers is not readily achievable in existing facilities, Title III requires covered entities to offer to provide services using alternative methods. Title III also requires effective communication which may require the provision of auxiliary aids and services to individuals with vision or hearing impairments or other individuals with disabilities, unless an undue burden would result, and requires all new construction and alterations of public accommodations and commercial facilities to be accessible. Title III became effective January 26, 1992.

NIDRR currently supports a $5 million technical assistance initiative on the ADA as well as a number of related research projects. NIDRR's Region VII, Disability and Business Technical Assistance Center, has piloted a community planning initiative on the ADA and early indications support the need for and utility of community planning.

A community planning and education program has the potential to create an environment that supports compliance with the ADA by both the public and private sectors. For example, State and local governments can modify the provisions of State or local building codes to be consistent with the requirements of the Standards for Accessible Design contained in the ADA regulations for public accommodations and commercial facilities, thus making it easier for businesses who must comply with State or local codes to comply with the ADA. Likewise, careful planning can ensure that money spent for curb ramps provides access to public services as well as privately owned businesses.

NIDRR proposes a small number of research and demonstration projects to develop, evaluate, and disseminate effective models of community planning and education to facilitate the implementation of the ADA. The projects to be funded under this priority are research efforts that would investigate and demonstrate how the implementation of the ADA at the community level may be supported by systematic planning and education.

While the ADA will affect virtually every aspect of community life, current efforts to comply with the ADA are being undertaken primarily by individual covered entities such as local governments or private businesses. For this reason, NIDRR proposes to support the development and validation of community planning and education models addressing all of the entities in the community that have requirements under the ADA using a community-wide approach to problem solving.

The ADA's broad mandate covers a wide array of individuals and entities. As a result, a community planning and education initiative on the ADA should include community and business planners, persons with disabilities and their families, State and local government officials, employers, and owners of public accommodations. In order to develop and implement such an initiative, participants need to understand the requirements of the ADA and be familiar with existing technical resources.

NIDRR recognizes the need for an array of community planning and education models that take into account such factors as the size, geographic location, and economic base of the community. NIDRR expects to award a number of grants in order to address the needs of different types of communities (e.g., urban, rural, suburban, industrial, etc.). Applicants shall designate and describe the community where the grant will operate.

This priority is intended to produce models that will assist government entities in complying with the ADA requirements that apply to public services, as well as to assist private entities in complying with the requirements under the ADA that apply to public accommodations, commercial facilities, and employers.

Community Education

One of the incidental benefits of the ADA is that it is raising the awareness of the general public about the issues and concerns of persons with disabilities and their families. The successful implementation of an ADA community planning enterprise may be substantially dependent on the degree to which the general public is familiar with the requirements of the ADA and appreciates the positive impact its successful implementation will have on persons with disabilities and their families as well as on the community at large.

Proposed Priority

A Research and Demonstration Project on community planning and education to further the implementation of the ADA shall—

- Within six months after the award date for the grant, develop a model of community planning and education to facilitate compliance with the ADA and inform the community about the requirements of the ADA and its relationship to the daily lives of persons with disabilities and their families;
- Ensure that those involved in the development and implementation of the model include community and business planners, persons with disabilities and their families, State and local government officials, employers, owners and managers of places of public accommodation, and other interested community leaders who understand the requirements of the ADA and are familiar with resources that are available to assist them to undertake their activities;
- Utilize ADA technical assistance materials developed by the Federal government or approved Federal government grantee materials;
- Coordinate its activities with the Regional Disability and Business Technical Assistance Center serving the community;
- Evaluate the implementation of the model of community planning and education to determine if it has

facilitated the implementation of the ADA in the community; and

• Disseminate the findings of the evaluation to similarly situated communities and to Federal agencies with enforcement responsibilities under the ADA.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 351

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Research and Demonstration Projects)

Dated: August 26, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–21320 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
September 2, 1993

Part VI

Federal Communications Commission

47 CFR Part 76
Cable TV Act of 1992; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-266; FCC 93-428]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission has adopted a First Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rule Making clarifying several of the Commission's cable rate regulations. The Third Notice of Proposed Rule Making segment of this decision may be found elsewhere in this **Federal Register**. The First Order on Reconsideration, Second Report and Order portion of this action clarifies the Commission's cable rate regulation rules for cable operators, subscribers, local franchising authorities and the Commission. This action is taken to respond to petitions for reconsideration of the Report and Order and Third Notice of Proposed Rule Making in this proceeding. Our actions are further intended to ensure that subscribers pay reasonable rates for regulated cable services with minimum regulatory and administrative burden on cable entities.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, (202) 632-5414; Beverly McKittrick, (202) 632-5414; Jennifer A. Manner, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Synopsis of First Order on Reconsideration and Second Report and Order

I. Introduction

1. In the Rate Order and Further Notice of Proposed Rule Making in MM Docket No. 92-266 ("Rate Order" and "Further Notice", 58 FR 29736 and 29769, May 21, 1993) this Commission adopted rules and established policies to implement cable rate regulation pursuant to the dictates of the Cable Consumer Protection and Competition Act of 1992 ("1992 Cable Act," "Cable Act of 1992" or "Act"). The primary results of the Rate Order were: (1) Development of a process for identifying those situations where effective competition exists (and rate regulation is thus precluded); (2) establishment of the boundaries between local, state, and federal responsibilities; and (3) development of procedural and substantive rules to govern the regulation of basic service tier rates, cable programming service tier rates, equipment rates, and rates for leased access channels. The Further Notice addressed whether the Commission should refine its initial rate-setting analysis by excluding from its sample of systems facing effective competition the rates of one statutorily identified group of systems, *i.e.*, cable systems with less than 30 percent penetration.

2. The issues raised in petitions for reconsideration of the Rate Order are as numerous and as varied as the regulations and policies adopted therein. With the first stages of cable rate regulation imminent, the Commission undertakes today to dispose of as many of the most pressing issues as possible, with the remaining issues to be resolved in the near future. Accordingly, this First Order on Reconsideration, Second Rate Order and Third Notice of Proposed Rule Making, ("Rate Reconsideration") is the first of two Orders that will dispose of issues raised in petitions for reconsideration of the Rate Order. It also resolves the further rulemaking issue raised in the Further Notice.

3. We find good cause under the Administrative Procedure Act to make this Order effective upon publication in the **Federal Register**. As explained below, the clarifications to our rules adopted in this Order refine our benchmark system of rate regulation. It is important these changes go into effect as soon as practical, in order to facilitate compliance of cable operators with the 1992 Cable Act and the Commission's implementing regulations, which go into effect September 1, 1993. Accordingly, we will make this Order and the implementing rule changes effective upon publication in the **Federal Register**. We also revise our rules to make them reflect the September 1, 1993, effective date adopted in an Order on July 27, 1993.

II. Summary

4. Specifically, this Rate Reconsideration effects the following actions:

(1) With regard to the benchmark methodology adopted in the Rate Order for setting rates, it:

Affirms the Commission's determination to set initial rates for all regulated tiers of service at a level that approximates as closely as possible that which would occur in a competitive marketplace;

Affirms the Commission's decision to use the universe of cable systems facing effective competition, strictly as defined in the statute, as a guide for establishing the competitive rate level; and

Affirms the use of a benchmark formula based on the rates of competitive systems, in conjunction with a rate rollback based on the "competitive differential" between rates charged by competing systems and noncompeting systems, for determining each cable system's legally permissible initial rate;

(2) With regard to price caps and the mechanisms for determining permissible rate increases, this Order:

Affirms that rates for regulated service set by the benchmark will be governed by a price cap mechanism once initial regulated rates are determined;

Affirms the accordance of external cost treatment to retransmission consent fees incurred after October 6, 1994, other programming cost increases, franchise fees, taxes and the costs of franchise requirements including PEG channels;

Affirms, in general and at this time, that costs associated with upgrades and other capital improvements be evaluated using cost-of-service principles and not be passed through as external costs;

Determines that only costs of meeting franchise requirements specifically enumerated in the franchise agreement will be eligible for external cost treatment;

Establishes a test for external treatment of taxes;

Lifts the limitation on programming cost increases for affiliated program services in favor of rules designed to prevent abuse of the pass-through allowance while not restricting recovery for programming cost increases that occur generally in the marketplace; and

Affirms the starting date for external costs treatment.

(3) With regard to rate-setting procedures, this Order:

Rejects arguments that refunds for overcharges on the basic service tier are not permissible under the Act;

Rejects the contention that franchise authorities can specify the content of the basic tier (beyond inclusion of PEG channels) under the statute;

Allows cable operators to file rate increases quarterly while requiring that filings reflecting increases in external costs also reflect any decreases in such costs; and

Requires cable operators to file revised rates reflecting decreases in external costs no later than one year from the date on which the decrease occurs.

(4) This Order addresses several questions regarding the regulation of rates for equipment and for installations. Specifically, it:

Affirms the decisions regarding the type of equipment regulated with basic service tier;

Affirms the application of the "actual cost" standard to cable programming service equipment and installations;

Holds that a cable operator's sale of equipment is unregulated when the cable operator provides subscribers the opportunity to lease the same equipment at regulated rates;

Affirms the application of the actual cost standard to additional connections;

Rejects several proposals to amend the guidelines for determining the "actual cost" of equipment on FCC Form 393, part III; and

Provides some clarifications regarding the use of Form 393.

(5) With regard to the guidelines and the procedures for determining whether or not a cable system is subject to effective competition, this Order:

Provides that where a cable system has elected not to serve parts of a franchise area, those parts will not be considered when defining the franchise area for purposes of the first statutory effective competition test; and

Reiterates that data regarding levels of subscription, used to establish the presence or absence of effective competition, can be provided by competitors in the aggregate.

5. Petitions concerning rules applicable to cable service generally are not addressed herein. These include questions concerning the requirement that cable systems have a geographically uniform rate structure, especially as regards bulk discounts and systems subject to effective competition; questions whether certain practices constitute evasions of the rules; the grandfathering of certain rate agreements; and subscriber bill itemizations. Questions regarding all aspects of the rules to govern leased access channels will also await resolution in the next reconsideration Order.

6. This Order also resolves the Further Notice by concluding that systems with less than 30 percent penetration should continue to be included in the universe of competitive systems used to develop benchmark rates. This result is dictated both by the clear statutory language, which defines such systems as being subject to effective competition, and by the absence of any compelling policy reason to exclude these systems from our analysis. In the Third Notice of Proposed Rulemaking, we seek comment on several critical issues, including:

(1) How to apply the benchmark methodology when a cable system adds or deletes channels on a going-forward basis;

(2) Whether cable systems that completed rebuilds immediately before regulation, and whose rates are below the benchmark level, should be permitted to raise their rates to the benchmark;

(3) Whether cable operators should be required to use a consistent rate-setting approach (either benchmark or cost-of-service) for all regulated tiers of service; and

(4) How systems upgrades required by local franchise agreements should be handled under the benchmark/price cap approach.

III. Order on Reconsideration

A. Benchmark Issues

1. Background

7. The Notice in this proceeding sought comment on several possible bases for setting rates for regulated cable systems, including: rates charged by systems facing effective competition; systems' past regulated rates; the current average rates of cable systems; and the average or typical costs of providing cable service. To aid in designing an appropriate rate-setting structure, the Commission obtained information concerning current rates, past rates, and system characteristics from a random sample of approximately 300 cable systems and from 141 systems that appeared to be subject to effective competition, as defined by the statute. This competitive sample included systems facing widespread direct competition from rival multichannel video service providers (both commercial and municipal) and systems with penetration rates below 30 percent.

8. The industry survey confirmed Congress' conclusion, reflected in the 1992 Cable Act, that the average rates of systems not subject to effective competition exceed those of systems subject to effective competition. Analysis of the survey data revealed that this "competitive differential" was approximately 10 percent on an industry average. Based on the statute and the survey results, the Rate Order concluded that the reasonableness of rates for the basic service tier, and the unreasonableness of rates for cable programming services, should both be determined by reference to rates of systems facing effective competition.

9. Accordingly, the Commission adopted a "benchmark" approach to project for any regulated system the rates that would be charged by a similarly situated system operating in a competitive marketplace. This approach will be used to set operators' initial rates. A system's actual rates that are at or below the competitive level, as determined by the benchmark formula, on the date of initial regulation will be deemed reasonable; actual rates above the benchmark-derived level will be presumed unreasonable, and must be reduced unless justified in a cost-of-service showing. Such rates above the benchmark must be reduced up to 10 percent from September 30, 1992 levels, (or until they reach the benchmark, if that is less than a 10 percent reduction), in order to recapture for subscribers the competitive rate differential found to exist on an industry-wide basis. This same benchmark formula and rollback liability applies to all regulated tiers of service, although the rules with respect to cable programming service are triggered by the filing of a complaint.

10. Petitions for reconsideration, oppositions and replies have been filed by numerous parties challenging (and supporting) various aspects of the benchmark regulations, and comments and reply comments have been filed regarding the use of low penetration systems in the competitive sample. In addition, some of the parties seeking reconsideration of the Rate Order also addressed the issues raised in the Further Notice. Issues such as the use of a benchmark and rollback methodology for setting rates, having a competitive rate as our goal in rate-setting, the propriety of using only "competitive systems" as defined in the statute to determine competitive rates, and compliance with the Administrative Procedure Act are disposed of in the Rate Reconsideration.

2. Discussion

a. *Effective Competition as Primary Factor.* 11. Various petitioners challenge the Commission's primary reliance on competitive rates in setting the benchmark rates. These petitioners contend that the Commission did not take into account the other factors listed in sections 623 (b) and (c) of the Communications Act for consideration in setting rates, including, for instance, the factors of reasonable profits for cable operators or rates charged by similarly-situated systems. Moreover, they argue, such cost variables as system size, geographic location, and franchise and programming costs were not considered. Other petitioners contend that other sources of revenue such as advertising and shopping channels were not taken into account.

12. After reviewing petitioners' arguments, we conclude that the Rate Order properly placed primary weight on rates of systems subject to effective competition in fashioning the

benchmark approach. Congress' findings, the overall structure of the Act, the statutory goal for the basic and cable programming service tiers, and the statutory factors for rate determinations all point to a strong congressional intent that cable subscribers should pay rates consistent with a level of rates that would prevail if their systems were subject to effective competition.

Additionally, and significantly, while we ultimately based the rate-setting methodology on the rates and other characteristics of competing systems, we took all of the statutory factors into account when developing this rate regulation scheme. In this regard, it is necessary to consider the various rate regulation mechanisms employed—benchmarks, cost-of-service showings and price caps—not in isolation, but as part of a regulatory system that incorporates the various statutory factors.

13. For example, petitioners overlook the fact that competing businesses must charge rates that are designed to cover all relevant costs and to provide for a profit in order to remain in business. Thus, when the Commission bases benchmark calculations on the rates charged by firms subject to effective competition, it effectively accounts for the costs of providing service for those systems, and also the need for any viable company to earn a "normal" or "competitive" rate of return. Also, the rate-setting formulation considered those variable system characteristics which statistical analysis showed to be the most significant, by including them in the benchmark formula. The other statutory factors are provided for in the price cap allowances. To the extent that petitioners are arguing that the Commission must take into account each individual system's costs and profit in setting its rates, that can be accomplished through a cost of service showing, for which the Commission has provided.

In sum, however, the Commission's benchmark rates are designed to adhere not only to the statutory factors but also to the Act's mandate that the administrative burden on all parties be reduced to the extent possible. Primary reliance on a benchmark formula based on competitive rates, as an initial means of determining regulated cable rates, with supplemental reliance on cost of service showings, is thus a reasonable approach and is consistent with provisions of the Cable Act of 1992.

b. *Application of the Benchmark Rates.* 14. Several petitioners seek reconsideration of certain specific aspects of the benchmark approach. For instance, some petitioners seek to allow systems with rates below the applicable benchmark rates to raise their rates up to the benchmark level. They contend that otherwise, the "good actors" that kept rates low before regulation will be "punished" because they may have to remain below the benchmark indefinitely. As stated in the Rate Order, however, the decision to cap the rates of operators already below the benchmark was based on the assessment that such below-benchmark rates were reasonable to each such cable system, since it voluntarily selected that rate level before regulation began. Accordingly, unless the operator was acting irrationally, its chosen rate level presumably enables it to recover its costs (which most likely are lower than average). Petitioners do not challenge this assessment or provide evidence that its assumptions are unfounded. In any event, as with all cable systems subject to regulation, if any operator's below-benchmark permitted rates are no longer sufficient to cover costs, it may initiate a cost of service showing.

15. Other petitioners argue that noncompeting systems with rates above the benchmark are being treated differently than competitive systems that have rates above the benchmark. Noting that the noncompeting systems will have to reduce their rates while the systems subject to effective competition will not, they claim that such different treatment of two similarly situated classes of systems is impermissible. However, these two classes of systems are not similarly situated. A competitive system can be presumed to be charging a competitive, "reasonable" rate by virtue of the presence of competition, whereas a system free of competition, enjoying market power, cannot be presumed to be charging a competitive rate, as illustrated by our data sample and analysis. The reasonable competitive rate for such a system can only be surmised by reference to the benchmark and rollback provisions derived from the sampling and analysis of the rates of competitive and non-competitive cable systems. The statute clearly states that systems that are subject to effective competition, as defined in the statute, may not have their rates regulated by the Commission or the local franchise authority. Thus, the 1992 Cable Act expressly provides for the different treatment of these different classes of systems. To the extent commenters are raising questions concerning the fact that the benchmark is based on average rates of systems subject to effective competition, these questions will be addressed in the Second Order on Reconsideration.

c. *Compliance with the Administrative Procedure Act.* 16. Some petitioners contend that the Commission has violated the Administrative Procedure Act in connection with its adoption of benchmark rules by failing to give adequate notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved." They claim that the benchmark rates established in the Rate Order are not a logical outgrowth of the rulemaking process. They further claim that parties did not have notice or opportunity to comment on the basic aspects of the methodology that would be used to determine the benchmark. For instance, they claim that none of the following items were disclosed in this proceeding until the Rate Order:

(1) The statistical tool or model that would be used in the regression analysis;

(2) Which factors would be significant in determining rates;

(3) The assumptions that would be made in connection with creating the benchmark;

(4) The adjustments that would be made to data; and

(5) The treatment of uncertainty in the statistical results.

17. The courts have long held that in applying 5 U.S.C. 553(b)(3), the notice requirement is satisfied so long as the content of the agency's final rule is a "logical outgrowth" of its rulemaking proposal. Moreover, the focus of the "logical outgrowth" test has been "whether * * * [the party], *ex ante*, should have anticipated that such a requirement might be imposed." Furthermore, the "[n]otice need not contain every precise proposal which the agency ultimately may adopt as a rule. Rather notice is sufficient if the description of the 'subjects and issues involved' affords interested parties a reasonable opportunity to participate in the rulemaking." If an agency were forced to adopt only rules as they were originally proposed, it would result in an interminable step-by-step process of a new notice and comment each time the rules slightly deviated from the original proposal.

18. The Notice went into considerable detail describing the proposals for creating a benchmark for cable rates and soliciting comments from parties. Indeed, the proposal ultimately adopted by the Commission, *i.e.*, benchmark rates based on rates charged by systems facing effective competition, was extensively discussed in the Notice. Notification was given that, to the extent sufficient data was available, regression analysis or some other statistical

technique could be used to determine how rates varied due to different characteristics. Petitioners thus had an opportunity to comment on the very form of benchmark ultimately selected by the Commission. While it is true that the precise benchmark formula was not included in the Notice such specification was impossible until the Commission conducted its statistical and regression analysis. However, the sample database was released to the public and an opportunity for public comment on the data was provided. The choice of the specific statistical method in calculating the benchmark rates is an appropriate matter for agency discretion.

19. Petitioners further argue that the Commission failed to give "a concise general statement of [the rule's] basis and purpose," because the Commission did not explicitly address certain comments. This argument, however, must also be rejected. "This section has never been interpreted to require the agency to respond to every comment, or to analyze every issue or alternative raised by the comments, no matter how insubstantial." The Rate Order took into account all significant comments concerning the establishment of benchmark rates.

20. Finally, some petitioners contend that the Commission did not respond to concerns raised by commenters that the data from overbuild systems was skewed because of price wars and that there were flaws in the data identified by NCTA. However, NCTA did not indicate in its original comments, and does not indicate in its petition for reconsideration, what effect, if any, the alleged errors in the sample data base would have in computing the benchmark rates. Accordingly, the Commission did not ignore any relevant factors in its decision.

B. Definitions and Findings of Effective Competition

21. Under the 1992 Cable Act, the rates of a cable system may be regulated only if the system is not subject to "effective competition." The Act provides that effective competition is presumed to exist if any one of three tests is fulfilled. The Rate Order set out the rules interpreting and implementing these statutory tests, and explained how various new video programming distribution services would be considered under the relevant tests. Several parties have requested reconsideration of discrete aspects of these rules.

1. Low Penetration Systems

22. Under the first statutory test, effective competition exists if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system." The Commission adopted a rule repeating almost *verbatim* the language of the statute and stated that, for purposes of applying this rule, the subscribership of each cable system in a franchise area will be measured separately and not aggregated with other systems.

23. Several groups of franchising authorities urge the Commission to define the term "franchise area" for purposes of the first effective competition test as "the area within a franchising authority's jurisdiction that an operator is required to service or that it in fact serves" or as the *de facto* (homes passed) rather than *de jure* (authorized) franchise area. In response, several cable operators contend that this approach conflicts with the express language or plain meaning of the statute and thus may not be adopted by the Commission.

24. Notwithstanding the concerns expressed by franchising authorities regarding the coverage of this statutory provision we are not in a position to alter the plain language of the statute through our regulations. The term "franchise area" is used for a variety of purposes within the statute and our rules and has a commonly understood meaning in the industry and in regulatory parlance. A franchise area is the area a system operator is granted authority to serve in its franchise. Thus, the substitution of a "homes passed" for "homes in the franchise area" test does not appear to be consistent with the plain language of the statute. Moreover, because franchise authorities themselves have both the authority to define the area to be served an anti-"redline" authority, they are not without the ability to themselves address some of the concerns raised in the reconsideration petitions.

25. We do believe, however, that there may be some limited situations (such as, for example, where a system operator has county-wide operating rights but has determined to serve only a specific named community within that area) where use of a more restricted "franchise area" definition may be both appropriate and consistent with the statutory language. An affirmative decision by a system operator to restrict service logically redefines its franchise area in terms of the objectives of this provision. Accordingly, we will permit franchise authorities to demonstrate the boundaries of such a redefined franchise area. Such a showing, however, will be limited to situations in which a system operator has itself, through its own conduct, self-defined the areas to be served to such an extent that this redefined area accurately portrays the operator's "franchise area." The fact that a franchise area has not yet been filled out by construction of a system would not by itself be taken as redefining the service area.

2. Procedures Regarding Effective Competition Demonstrations

26. A cable operator is presumed not to be subject to effective competition and carries the burden of rebutting this presumption with evidence of the presence of effective competition as defined in the Act. To obtain access to information necessary to rebut this presumption, cable operators may request from a competitor information regarding the competitor's reach and penetration, if such information is not otherwise available. The rule requires that competitors must respond to such requests within 15 days, and that responses may be limited to numerical totals.

27. One petitioner alleges that some cable operators are requesting that competitors reveal, pursuant to the above rule, specific subscriber information, including lists of subscribers and their addresses. As stated in the Rate Order, however, "responses may be limited to the numerical totals needed to calculate the distributor's reach and penetration in the franchise area." A competitor need only supply these aggregate totals. Lists of subscribers and their addresses clearly do not fall into this category and should not ordinarily be disclosed. If cable operators are alleged to have abused their right to request effective competition data from a competitor, the Commission will, as indicated in the Rate Order, deal with such situations on a case-by-case basis.

28. A joint petition filed on behalf of several cable MSOs expresses concern that some cable operators may not be able to demonstrate the presence of effective competition in sufficient time to stay a franchising authority's certification to regulate basic cable rates, because competitors may not respond to requests for information on their penetration and reach within 15 days. The petitioners are concerned that these competitors have no incentive to cooperate with cable operators and that there is no enforcement mechanism for this rule.

29. We believe that cable's competitors generally should be able to comply with requests for aggregate data

on reach and penetration within the required 15 days. Since such information is likely critical to a competitor's billing and marketing efforts, it should be readily available. The joint petitioners mere speculate that competitors will intentionally withhold or delay providing information; there is currently no evidence of such conduct. Moreover, many of the most significant competitors to incumbent systems, such as other cable systems and MMDS systems, are either licensed or regulated in part by the Commission, and enforcement proceedings thus can be instituted against them should they deliberately fail to respond as required. And, as indicated in the Rate Order, if unresponsiveness does threaten to become a prevalent problem, the Commission could require periodic reporting from all competitors.

30. Finally, relief can be provided to cable systems in individual cases of unresponsiveness as necessary and appropriate. Such relief could consist of an extension of time to file a petition for reconsideration challenging a franchising authority's certification. Alternatively, an operator can file a request for revocation of a franchising authority's certification pursuant to section 623(a)(5) of the Communications Act, even after the time for filing reconsideration of a franchising authority's certification has passed.

C. Tier Neutral Rate-Setting Methodology

31. In the Rate Order, the Commission adopted a tier-neutral framework for rate-setting that is the same benchmark formula and rollback requirements are to be applied to basic tier services and to cable programming tier services. It concluded that the Act's directions, on the one hand, to "ensure that rates for the basic service tier are reasonable," and, on the other hand, to "establish * * * criteria for identifying, in individual cases, rates for cable programming services that are unreasonable," merely reflect the different procedural schemes Congress adopted for these different tiers—that is, basic tier rates are to be pre-approved by local franchise authorities and cable programming tier rates are to be addressed by this Commission and only when challenged by a complainant. Some parties had argued that different regulatory schemes were required for basic cable and cable programming services because the factors listed in the Act to be considered in determining the appropriate rate level for each tier differed somewhat. The Commission held, however, that the differently stated factors did not mandate different rate-setting approaches, but rather could accommodate the same rate standard for both tiers if that standard adequately balanced, and took into account, the respective factors for each tier. Moreover, the benefits of tier neutrality were found to outweigh other considerations that would favor adoption of different rate standards for the basic and cable programming service tiers. Specifically, the tier-neutral approach removes any incentive for moving programming from the basic to cable programming service tiers, or vice versa, and reduces the administrative burdens on cable operators and regulators by greatly simplifying the rate-setting process.

32. A number of petitioners, primarily cable operators, reiterate their arguments that rates for basic and for cable programming service tiers should be regulated by different standards, given the different factors for consideration stated in the Act. But these petitioners offer no new insight on this analysis. Their arguments were fully considered and rejected in the Rate Order and are not extensively reanalyzed here. Accordingly, we deny their requests for reconsideration of our decisions on this issue. A few petitioners, however, have raised new arguments that we will now address.

33. Time Warner and Newhouse contend that, because the tier neutral scheme averages all tier costs into an initial average per-channel rate, it violates the statutory directive that the Commission take into account only those joint and common costs that are properly allocable to the basic service tier when developing rate standards for that tier. This argument is unavailing. This statutory provision provides that only a reasonable allocation of joint and common costs should be allocated to the basic service tier, but leaves to the Commission's discretion the determination of what is a reasonable allocation. The benchmark methodology uses per channel rates established by averages, but it then multiplies that per-channel rate by the number of channels in a given tier in order to establish the permissible rate for that service tier. This approach provides a reasonable allocation of rates (and presumably costs) in that it is in direct proportion to the level of service provided on each tier, as measured by the number of channels of service supplied to the subscriber. If petitioners' argument is meant to assume that non-basic tier costs are higher than basic tier costs, they do not demonstrate that this is necessarily the case. Moreover, one reason for the adoption of tier neutrality was to eliminate any incentive for operators to move services to other tiers where they could charge relatively higher prices without necessarily corresponding higher costs.

34. Booth contests the Commission's premise that allowing operators to charge relatively more for cable programming services would result in a "stripped down" basic tier, and insists that the Commission has no evidence of this. Our longstanding experience with rate regulated companies, however, has taught us that such entities have every incentive to maximize revenues to the extent permitted by regulation. In the instant case, it is entirely likely that a cable operator who could maximize revenue by moving programming services to the tier that enabled him to charge the highest per channel rate would do so. It is well within our discretion to make such predictive determinations, Booth's contrary claims notwithstanding. Moreover, some record evidence indicates that operators were in fact retiering in anticipation of the adoption of rate regulations.

35. Affiliated and Liberty argue that the tier-neutral scheme creates an incentive to offer on a per-channel basis the programming now offered on tiers, noting that such *a la carte* programming is not regulated by the Cable Act. However, any such incentive to avoid regulation of the rate for a programming service (or services) is created by the statute itself and occurs irrespective of tier neutrality in rate setting. Even in the absence of tier neutrality, rates on all tiers would be regulated to "reasonable" competitive levels. The desire to avoid such regulation would seem primarily a function of the actual rate permitted under the regulation. Additionally, restructuring program offerings to provide more *a la carte* services is not *per se* undesirable, as offering programming on a per-channel basis increases consumer choice, which is one of the goals of the Act. Moreover, as noted in the Rate Order, it is not clear that operators, as a business matter, have unlimited ability to shift programming from tiers to per-channel offerings.

36. Finally, Northland and Affiliated Regional Communications contend that tier neutrality eliminates any incentive to carry high-quality programming as part of a regulated offering. This argument, however, ignores the fact that the benchmark calculation is based on the rates of operating (and thus presumably viable) cable systems subject to effective competition, which incur programming costs, including the costs for high-priced programming services. Also, high-priced programming should have some value to the system

from a marketing, penetration, and customer satisfaction standpoint in order to justify its carriage; any exceptional price can be offset by the numerous lower-priced and no charge programming services carried by cable systems. To the extent new program services may come at a relatively high price, their treatment is addressed in the Third Further Notice of Proposed Rulemaking. Finally, as a regulatory matter, the operator retains the option to offer any or all programming on an unregulated per-channel basis, or to submit a cost-of-service showing rather than rely on the benchmark approach. Accordingly, these petitions for reconsideration of the tier neutral methodology for rate setting will be denied.

E. Rate Regulation of Equipment and Installations

37. Section 623(b)(3) of the Communications Act requires the Commission to establish standards, based on actual costs, for the rates charged for equipment and installation used to receive basic cable service on one or more outlets. Pursuant to section 623(c) of the Communications Act, the Commission also must establish criteria to determine whether rates for cable programming services, including the installation and rental of equipment used to receive such programming, are unreasonable. This section addresses petitions for reconsideration discussing the equipment to be regulated, the manner in which rates charged for equipment and installations shall be determined and the relevant entries on Form 393 for calculating such rates.

1. Equipment Covered by Basic Service Regulation

38. Section 623(b)(3) directs the Commission to establish standards for setting, on the basis of actual cost, the rate for lease of equipment used by subscribers to receive the basic service tier, including converter boxes and remote control units, and lease of monthly connections for additional television receivers. The Rate Order stated the Commission's belief that Congress intended the actual cost standard to apply broadly to all equipment used to receive the basic service tier, even if it is also used to receive other cable services. The Commission concluded that Congress' decision to change the terminology from "equipment *necessary* by subscribers to receive the basic service tier," found in the House Report, to "equipment *used* by subscribers," (emphases added) found in the Conference Report and adopted in the Act, was significant and was specifically intended to broaden the class of equipment subject to regulation on an actual cost basis. The Rate Order also concluded that Congress had decided that equipment would be regulated unless a finding was made that the entire cable system was subject to effective competition.

39. Several petitioners, primarily cable operators, seek reconsideration of the Commission's broad reading of "equipment used to receive the basic service tier." These parties argue that only certain fundamental equipment used to receive the basic service tier, and not equipment whose use for basic service, is only incidental to its primary purpose, should be regulated pursuant to the "actual cost" standard specified in section 623(b) of the Communications Act. Under this approach, equipment installed when the subscriber chooses to have access to cable programming services would be regulated under the "not unreasonable" standard in section 623(c) and equipment used to access unregulated per-channel or per-program services would remain unregulated, even if that equipment also accesses signals on the basic service tier. The petitioners argue that, when substituting the phrase "used" to receive the basic service tier for the phrase "necessary" to receive the basic service tier, Congress merely intended to broaden the language in the Act so as to include remote control devices and other ancillary equipment used by basic subscribers which might not be considered "necessary" for basic service. Several cable operators contend that, if Congress intended all equipment to be priced on the "actual cost" standard, the Cable Act would not have specifically referred to descrambling equipment used to receive pay services by a basic-only subscriber. These parties argue that our interpretation of the Act makes this reference in section 623(b)(3)(A) superfluous because such equipment would already have been included under the actual cost standard.

40. Further, some petitioners note that regulating as part of basic service the equipment used to deliver cable programming services or pay services renders meaningless Congress' decision to add equipment and installation to the definition of cable programming service. In this regard, Cablevision states that if Congress intended a broad reading of "equipment used to receive the basic service tier," it would not have chosen to include equipment in the definition of cable programming services. In contrast, NATOA believes that the Commission is correct in subjecting equipment "used" to receive basic service to actual cost regulation regardless of whether it is also used to receive any other programming service.

41. We affirm our prior conclusion that Congress intended the actual cost standard to apply broadly to all equipment used to receive the basic service tier. Notwithstanding petitioners' reiteration of their prior arguments, we continue to believe that the interpretation in the Rate Order of the legislative history, including the changes in the language in section 623(b) and in the definition of cable programming service is correct. Moreover, we note that if we were to adopt a narrow interpretation of "used to receive the basic service tier," as advocated by several of the petitioners, only a small percentage of equipment would be subject to regulation under the "actual cost" standard specified in section 623(b) of the Communications Act. According to April 1993 estimates, 74 percent of cable households receive some per-channel service along with basic cable. Many of these subscribers use converters to receive their pay services, the rates for which would not be regulated under petitioners' interpretation of the Act. It is thus apparent that adoption of petitioners' approach would result in a significant amount of unregulated equipment, thereby undermining Congress' concern over the high rates charged for cable equipment.

42. We further observe that Congress intended that our regulations establish equipment rates similar to those that would exist in a competitive environment. Under the "actual cost" standard, cable operators recover their costs including a reasonable profit. This will result in rates comparable to those that would exist in a competitive environment, thus subjecting a reasonable amount of equipment to a standard that furthers Congress' intention.

43. Some petitioners also argue that an inclusive interpretation of equipment subject to the "actual cost" standard will stifle technological development in subscribers equipment. They claim that this interpretation will discourage innovation by depriving manufacturers and cable operators of the financial rewards commensurate with the risks inherent in the design and development of advanced equipment. Cablevision further asserts that the Commission's failure to exempt from rate regulation converters that add incremental features unrelated to the receipt of cable services, such as handsets for personal communications services and facsimile machines, frustrates the public policy goals of promoting innovation and investment in the design and

development of advanced converters and is inconsistent with the Commission's policy with respect to common carriers of permitting the offering of customer premises equipment (CPE) on a deregulated basis.

44. We remain convinced that our regulatory scheme will not stifle technological development. Cable operators are entitled under this section of the Act to recover the costs, and earn a reasonable profit, for any equipment used to receive the basic tier. The revenues they receive thus should approximate their revenues in a competitive market. There is nothing in the record—nor in the Commission's experience—which suggests that equipment manufacturers and cable operators need to be able to charge higher than competitive rates in order to develop innovative equipment. To the contrary, this Commission has long held that competition is a spur to technological development, not a hindrance. Moreover, even if a specified piece of equipment is subject to regulation, any services provided using that equipment other than basic service or cable programming services, whether cable-related or not, remain unregulated. Cable operators thus have the option of using revenue derived from unregulated services to cover any equipment-related costs that they do not wish to recover through equipment charges. As noted in the Rate Order, nothing in the Cable Act prevent a cable operator from offering equipment below cost to encourage its use.

45. A number of petitioners argue that where a competitive market for similar equipment exists within the franchise area, such equipment should be unregulated. They contend that this approach is consistent with Congress' intent to rely on the competitive marketplace to the extent feasible, citing section 2(b)(2) of the 1992 Cable Act. In opposition, GTE approves of the regulations, asserting that, if properly executed, they will lead to the kind of competition that has emerged in the telephone industry in installation, maintenance, repair, and lease/purchase of equipment.

46. These petitioners merely reiterate arguments considered in the initial decision not to establish a separate effective competition test for equipment, and that decision is affirmed. The Rate Order indicated that the information necessary to establish an effective competition test for equipment and installation is not available at this time, and the petitioners have not provided additional information with respect to creating a standard for determining when the market is competitive. The Commission, recognizing that competition for cable equipment technologies is evolving, will continue to monitor the marketplace and will reexamine this issue at an appropriate time.

2. Application of the Actual Cost Standard

47. Section 623(b)(3) of the Communications Act requires that the rates for equipment and installation used to receive basic service reflect their actual cost. In order to determine the actual cost of equipment and installations, cable operators must unbundle each piece of equipment and must separate equipment from installation. They also must utilize a specific methodology for determining the actual cost of each piece of equipment and installation. Under this methodology, the cable operator must establish an Equipment Basket to which it assigns the direct costs of service installation, additional outlets, and leasing and repairing equipment. In the Equipment Basket, the cable operator must allocate the system's joint and common costs that service installation, leasing, and equipment repair share with other system activities (but not general system overhead), plus a reasonable profit. The guidelines that cable operators must follow to calculate these actual costs are set forth in FCC Form 393, part III. Cable operators must also unbundle and apply this actual cost standard to cable programming service equipment and installations to determine whether charges for these items are not unreasonable as required by section 623(c).

48. NCTA and several cable operators seek reconsideration of the decision to require unbundling and to apply the same actual cost methodology to equipment and installation charges for the basic service tier and for cable programming services. They argue that cable service and equipment are interdependent goods and bundling should be permitted. NCTA and others ask that the Commission allow equipment and installation charges for cable programming services to be above actual costs, as long as overall rates are reasonable, stating that such subsidization will allow cable operators to offer a low-cost basic service.

49. These parties merely restate the argument disposed of in the Rate Order that section 623(c) of the Communications Act sets forth a "not unreasonable" rate standard for cable programming services, including equipment and installation, as opposed to the "actual cost" requirement for the basic service tier, found in section 623(b). In developing a comprehensive regulatory scheme for rate regulation, however, a tier-neutral benchmark approach was found to best fulfill the stated goals of the Cable Act. Consistent with that decision, the programming portion of cable programming service is subject to the same benchmarks as basic tier programming. Since Congress defined this service with an equipment and installation component, we concluded that an actual cost standard is most appropriate for determining equipment and installation charges, notwithstanding the discretion afforded to select an alternative approach. Although this fundamental decision has been challenged on reconsideration, petitioners have failed to present any alternative methodology we might use when evaluating whether the rates for cable programming service equipment are "not unreasonable." Accordingly, we affirm our decision to use the actual cost standard to measure the reasonableness of rates for cable programming service equipment and installations. This standard will protect consumers from unreasonable rates and at the same time permit cable operators to earn revenues comparable to those that could be gained in a competitive environment.

50. Petitioners' argument that we not require unbundling of equipment and program service charges also was fully analyzed and rejected in the Rate Order. As we discussed in that decision, an unbundling requirement is the most effective means of ensuring that rates for program services and rates for consumer equipment each meet the separate standards of reasonableness set forth in the 1992 Cable Act and the Commission's Rules. In addition, an unbundling requirement best addresses Congress' concerns that bundling practices have played a significant role in enhancing cable's market power. In view of the petitioners' failure to raise new and persuasive arguments on this issue, we affirm our decision to require the unbundling of program service and equipment rates.

51. Time-Warner seeks reconsideration of the decision to apply the actual cost standard to the sale of equipment. It argues that the statute does not address this matter and that the Commission is not empowered to establish such rate regulation. Further, Time-Warner contends, this action is not in the public interest, since a competitive market exists for the equipment available for sale. Whether the requirements of section 623(b)(3) for establishing a "price or rate" for "installation and lease of equipment" includes the sale of such equipment is

unclear. However, we decline to exempt from regulation sales of equipment if to do so would merely create a loophole that would allow cable operators to avoid our equipment rules. Section 623(h) empowers the Commission to prevent evasions of our rules, which we believe could occur if operators were free to convert leasing arrangements to "installment sales contracts" and thereby avoid regulation of equipment rates. On the other hand, there is no need for the Commission to regulate the sale of equipment where comparable equipment is available from operators on a leased—and regulated—basis. Therefore, we conclude that equipment sales by an operator will be unregulated where the operator offers subscribers the same equipment under regulated leased rates.

3. Additional Connections

52. Section 623(b)(3)(B) of the Communications Act requires the Commission to establish rate standards, on the basis of actual costs, for installation and monthly use of connections for additional television receivers. The Rate Order stated that the costs associated with additional connections should be included in the Equipment Basket and that operators should recover such costs in the related equipment and installation charges. Equipment and installation charges for additional connections are to be calculated in a manner similar to that prescribed for the primary cable outlet, although it is expected that there will be a smaller charge for installing an additional connection that does not require a separate visit to the subscriber's home. In addition, a cable operator is permitted to recover additional charges, through a monthly charge limited to the operator's additional programming costs, for programming it transmits to additional outlets. Any network costs incurred to facilitate the provision of multiple outlets to subscribers is treated as general system overhead and is to be recovered through program service rates.

53. Several cable operators request that the rules be modified to permit monthly service charges for additional outlets beyond the lease of the additional equipment needed to receive cable service at these additional connections. Parties contend that the Commission erred in interpreting the statute and legislative history to limit additional outlet charges to cover only the lease of the needed equipment. They argue that this approach prevents operators from charging subscribers for the value inherent in the discretionary option of having cable service available at additional outlets. Others, however, argue that where Congress intended for the actual cost standard to apply only to equipment it specifically so stated, and, thus, value-based monthly service charges are not intended for additional connections.

54. The petitioners have raised no new arguments and the Commission's interpretation in the Rate Order of section 623(b)(3) of the Communication Act, which sets forth the items to be regulated on the basis of actual cost, is affirmed. In paragraph (A) of section 623(b)(3), equipment is specifically mentioned, while in paragraph (B) of that section the relevant term is "monthly use of connections for additional television receivers" (emphasis supplied). In light of the difference in terminology, it appears that monthly use of connections denotes the receipt of the service at additional home outlets. Thus, there seems to be no basis in the statute for allowing cable operators to charge for the "value" of additional connections above and beyond their actual costs. The Rate Order determined that the best method for recovery of such costs is through related equipment and installation charges. Operators may also charge subscribers for any additional programming costs they incur when providing services to additional outlets. In addition, revenue from equipment, including that from additional outlets, was added into the revenue from cable service to determine the rate per-channel that is the basis for the benchmark measurements. The revenue previously received from additional outlets will, under the benchmark regime, now come from per-channel charges for cable service. Therefore, there is an opportunity for cable operators to continue to earn such revenues under the benchmark approach.

55. Petitioners also state that the Commission failed to take into account the costs incurred in designing a cable system capable of providing a signal strong enough to serve multiple outlets in a home. In particular, Time Warner asserts that cable networks have been designed to accommodate an expected number of additional outlet requests, a number that is likely to rise significantly beyond the capability of existing networks if this service must be offered at cost. These cable operators argue that they should have a means to recover the costs of these needed network improvements without the burden of cost-of-service showings. In this regard, Arizona recommends that the Commission permit cable operators to recover the costs of providing additional connections through a modest monthly charge that represents a percentage of the capital expenditures for the network, the capital costs involved with providing the additional outlet and the costs of maintenance of such outlets.

56. Petitioners' claim that their networks are not currently designed to accommodate the increased number of additional connections that will be requested is not substantiated with evidence in the record of this proceeding. Moreover, no party has provided sufficient information upon which we could determine an allowance based on current incremental system costs or future costs resulting from increased demand. Thus, until the demand for additional connections unable to be accommodated is known, no further consideration of this matter is needed. The rules, in general, provide a means to examine individual cases, including through a cost-of-service proceeding. Moreover, should parties provide evidence at a later date to substantiate their claims, the Commission can reevaluate the situation.

4. Guidelines for Determining Equipment and Installation Charges

57. The Commission developed Part III of FCC Form 393 to provide the methodology for calculating the actual costs of equipment and installation charges for cable service in the Equipment Basket. A number of reconsideration petitions address the general guidelines for determining actual cost. Some petitioners also seek modifications of the form or request clarifications regarding its use. In addition, a number of questions relating to the calculation of the actual cost of equipment and installations have arisen since the adoption of the Rate Order. Several of these issues are addressed in turn below.

58. Some cable interests argue that the permitted rate of return of 11.25 percent is too low and has no basis other than its use as the rate allowed local telephone exchange carriers. As evidence that a higher rate is justified, Booth America observes that the average bond yield over the past two years for the cable industry set by the investment community is higher than comparable bonds for local telephone exchange carriers (8–15 percent vs. 7–9 percent). The relative bond yields for different industries, however, is not necessarily correlative to the reasonable rates of return for the regulated segments of those industries. The choice of an 11.25 percent rate of return for regulated cable equipment was based on the

Commission's experience in rate making. However, the allowed rate of return can be adjusted by the Commission, if the current provision proves to be unfair to either cable operators or to ratepayers. Further, cable operators may apply the rate of return at a rate "grossed up" for income taxes, and the instructions for the calculation of income taxes includable in Column G of Schedules A and C have been revised to reflect this change.

59. A number of cable operators state that the actual cost methodology does not recognize the costs of tax liability attributable to partnerships, Subchapter S corporations and sole proprietorships. They observe that these taxes are not paid by the operator, but by the ultimate owners. However, they claim that these taxes are legitimate costs of providing equipment and services and should be recoverable. These petitioners, however, misconstrue the workings and purposes of these provisions. All taxes, including income taxes for those business entities required to pay income taxes, are taken into account in our actual cost methodology. The provision for income taxes is made to compensate the business entity for a cost of doing business and to allow it thereby to earn a fair after-tax return on investment. Any business with a statutory income tax obligation thus may include the cost of such obligation in its rate calculations. However, because Subchapter S corporations, partnerships, and sole proprietorships do not have an income tax obligation as business entities, this provision is not applicable to them. Accordingly, such entities that do not have income tax obligations would enter zero in Column D of Schedules A and C. For corporations with income tax obligations, the amount included in Column D is based on the "grossed-up" statutory rates, not the tax rate actually paid.

60. Arizona asserts that the methodology for determining monthly equipment charges depends on the extent to which equipment has been depreciated. It claims the original cost cannot be recovered over its remaining useful life in some situations and suggests that cable operators be allowed to calculate the monthly equipment lease charge using a *pro forma* methodology that permits recovery of original costs. Baraff states that Form 393 appears to permit an operator to include equipment and service not previously offered. However, it observes that the form relies on historical data for determining a permitted rate and seeks clarification that an operator may use prospective costs where it anticipates offering new equipment.

61. The methodology specified for development of rates for leased equipment is dependent to an extent on the amount of accumulated depreciation associated with each equipment type. This is necessarily so because it is assumed that recovery has already been attained for that portion of plant for which depreciation has been taken and no provision should be made for recovery beyond the cost of the plant. This assumption is founded on the expectation that operators use standard accounting practices, which would employ depreciation lives commensurate with the economic productivity of assets and would thus match the costs of the plant with the revenues generated by the use of such plant.

62. The equipment rates, however, are not dependent on the accumulated depreciation balance alone. As a result, the rates for one operator with a higher proportion of accumulated depreciation will not necessarily be lower than another operator with a lower proportion of depreciation. For example, if all factors except age are equal, including original cost and useful life of equipment, the rates should be the same for both operators. The one with the newer equipment and, therefore, lower accumulated depreciation will simply be allowed to charge customers for a longer period until full recovery is attained.

63. To the extent that systems have failed to recover amounts now reflected in accumulated depreciation, the amount would be reflected in the system's accumulated loss. It is recognized that the failure to make recovery and the accumulation of losses result from policies involving business strategies put in place before the introduction of regulation. Comment has been sought on the need to make special provision for such losses in a separate cost of service proceeding. Whatever the result of that inquiry, the procedures for rate development for equipment should apply sound ratemaking principles and assume good accounting practices. Recovery of past shortfalls will be considered as a separate item.

64. In establishing the rules for the pricing of equipment, we intended that operators would have a methodology for pricing leased equipment in such a way that would effectively allow recovery of full cost over the equipment life. In theory, then, a piece of equipment would be fully paid for just when it is ready for retirement and new equipment must be installed. Recalculation of rates for each equipment type is allowed annually and customer charges should be adjusted up or down based on the recalculation. As newer models are employed, a separate rate shall be developed. In such case, when the new model is introduced during the interim, a rate may be calculated and used until the annual recalculation is made. Alternatively, however, where the operator expects eventually to replace the older model upon retirement with a newer model that is not significantly different, operators may phase the new equipment in by developing a weighted average rate for both the new and old items.

65. A few petitioners request clarification or modification to allow use of data averaged on a system-wide or accounting unit basis throughout Form 393, not just in selected places, to alleviate some of the burdens of completing the form. Form 393 does not actually specify the level of averaging that is allowed or required for equipment costs. The form is designed, however, to develop rates for each franchise within an operator's system. We clarify that the allocation of equipment costs to the franchise level may reflect averaging to the extent permitted by the cost accounting and allocation provisions of Section 76.924 of our rules.

66. While not raised specifically in the petitions, several other matters need to be explained or clarified. Lost converters should not require separate consideration in the calculation of equipment rates inasmuch as the depreciation rates may take into account a normal loss, and retirement of such lost items will adjust the net plant balance. To the extent that there is an unusual number of lost items which is not provided for in depreciation rates, a reasonable adjustment may be made to recover the cost. Likewise, unusual maintenance may not be adequately provided for. For instance, where a company sends one equipment type out for repair instead of doing the work itself, such amount will be averaged over all equipment types if the expense is included on Schedule B. To remedy this, the expense should be included on Schedule C, Column H with notation and documentation. This will ensure that the cost is averaged over the specific equipment type only and not over all equipment.

67. Annual recalculations of equipment costs should be based on the annual data for the operator's previous fiscal year. When, however, there has been an unusual change in operations that would not be adequately reflected in the previous year's annual data,

subject to acceptance by the local franchising authority, or by the FCC when applicable, a representative month may be used for the calculation of rates. Further, when there would be no material difference in results from using a representative month rather than the past fiscal year, and where the local franchise authority, or the FCC when applicable, finds it acceptable, a representative month may be used. In both cases, the operator should attach a brief statement to Form 393 explaining why it is appropriate to use a representative month.

68. The equipment calculations provide that the cost of maintaining equipment is to be included in the charge made for the equipment. Accordingly, there should not also be a separate charge made to customers for service calls to maintain company owned equipment on customers' premises.

69. The charge for service installation is to be calculated on the basis of the hourly service charge (HSC). This charge includes the direct labor as well as the capital costs of the service installations as determined on Schedule A of Form 393, part III. Consistent with our determination to unbundle installation and equipment charges in the Rate Order, it does not include the cost of material for the drop, connections, inside wire, or other equipment installed. These items are either capitalized as distribution plant or separately chargeable to customers in equipment prices. The installation labor may include all labor from the drop inward, including the cost of labor to install the drop and connections. Since the cost of the drop material is capitalizable as distribution plant, the expected maintenance to the drop over its useful life shall not be included in the installation charge. Installations are not to be capitalized and are, therefore, not includable on Schedule C of Form 393, part III. Finally, the installation charge may be a one time charge or set up in installments.

F. Procedural and Jurisdictional Issues

1. Preemption of Franchise Agreements Barring Rate Regulation

70. The Rate Order stated that the 1992 Cable Act preempts provisions in existing franchising agreements barring rate regulation by franchising authorities. It cited the House Report which stated that all franchising authorities, regardless of preexisting provisions in a franchise agreement, now have the right to regulate basic cable service rates if they meet the certification requirements. In this regard, it noted that Congress would not have expressly grandfathered specified types of rate regulation agreements in section 623(j) of the Communications Act had it intended that any other rate regulation agreements would continue in force and effect.

71. One petitioner, representing cable interests, requests that the Commission allow cable operators and franchising authorities to enter into new agreements under which local authorities would forbear regulation. This petitioner contends that such agreements serve the public interest to the extent that a franchising authority may negotiate benefits such as upgrades and expanded services areas, or where it determines that it can make better use of its franchise fees than in costly rate regulation. The petitioner proposes that such agreements may not be conditioned on some alternate form of rate regulation, and that they permit the franchising authority to seek certification if the cable operator breaches the agreement. Another group of cable operators asserts that such agreements would reduce the number of Commission cost-of-service proceedings and appeals of local cost-of-service proceedings, as well as permit negotiation for service options that may not be easily obtained without cost-of-service showings.

72. We believe that the types of arrangements described by the petitioners are not permitted under the Act. As the Conference Report stated the goal of section 623(a) of the Communications Act "is to protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition." It is apparent that Congress did not intend to permit local franchising authorities to bargain away this statutory protection for local subscribers in exchange for some other related or wholly unrelated benefit, whether perceived or actual. Under the current regulatory scheme, a franchising authority that does not believe rate regulation is necessary may simply choose not to seek certification from the Commission. The franchising authority may conclude, for instance, that the cable operator's basic rate is reasonable and its service satisfactory, or the franchise fee may be earmarked for other governmental purposes. As stated in the Rate Order, the Commission will not assume jurisdiction at this time where a franchising authority does not apply for certification. Such a decision by the franchising authority, however, does not and cannot preclude it from seeking certification in the future if circumstances warrant local rate regulation.

2. Cable Operator Responses to Cable Programming Services Complaints

73. Section 623(c)(1)(B) of the Communications Act requires the Commission to establish "fair and expeditious procedures for the receipt, consideration and resolution of complaints" regarding cable programming services. Section 623(c)(3) provides that, with the exception of complaints filed during the 180-day period following the effective date of our rules, cable programming service complaints must be filed within "a reasonable period of time" following a change in rates, including a change in rates resulting from a tiering change. The Rate Order interpreted "reasonable period of time" as 45 days from the time a subscriber receives a bill from the cable operator that reflects the rate increase. The Rate Order also determined that the complainant must supply certain readily available factual information to make a "minimum showing," on a standard complaint form, to receive adjudication of the complaint. Complaints that fail initially to meet the minimum showing requirement will be dismissed without prejudice and the complainant will be given one additional opportunity to file a corrected complaint. Absent a Commission notification that the complaint fails to make the minimum showing, the cable operator must respond within 30 days from the date of service. A cable operator failing to file and serve a response to a valid complaint may be deemed in default, and an order may be entered against the cable operator finding the rate in question to be unreasonable and mandating appropriate relief.

74. Certain cable operators argue that the Commission should first determine whether a complaint is meritorious before the operator is obligated to respond. Petitioners contend that the burden should not be placed on the cable operator to respond in 30 days if the Commission is unable to dismiss frivolous complaints within that time period. They argue that if the Commission does not first determine that a complaint fails to meet the minimal requirements, then the cable operator should be able to respond simply that the complaint is deficient and not be required to justify its rates.

75. We believe that cable programming service complaint procedures adopted in the Rate Order effectively implement the statutory mandate. With respect to patently defective complaints, Commission

processing should eliminate such complaints within 30 days, prior to an operator's response. If petitioners mean to implicate complaints that are not patently defective, they would seem to transform the subscriber's "minimum showing" requirement into a *prima facie* showing requirement, which would be in direct contradiction to the purpose of Section 623. Petitioners' proposal would also delay Commission consideration of the subscriber's complaint, because the subscriber and the Commission would ultimately wait longer for the cable operator's substantive response before the rates could be considered. As a practical matter, the cable operator, not the subscriber, is privy to the information that will support its rates. Moreover, most cable operators can be expected to have already performed a benchmark calculation to some level of precision in setting their rates. The 30-day time period for cable operator responses to a cable programming services complaint (unless dismissal occurs during that period) thus sufficiently addresses the Commission's ability to review the complaints in a complete and timely fashion, while preserving congressional intent to place a minimal burden on subscribers.

3. Refund Liability Pursuant to Unsuccessful Effective Competition Challenge

76. The Rate Order stated that a cable operator may file a petition for reconsideration of the franchising authority's certification within 30 days after the certification is granted. It also stated that if the petition for reconsideration challenges the presumption that effective competition is absent, rate regulation will be automatically stayed until resolution of the petition. If the petition is resolved in the franchising authority's favor, *i.e.*, no effective competition is found, the cable operator would be subject to refund liability back to the date the petition was filed. The Commission adopted this procedure to protect the rights of cable operators to be free of rate regulation in the event effective competition does exist, while ensuring that subscribers receive compensation for any overages charged during the pendency of an ultimately unsuccessful petition.

77. A number of municipalities contend that refund liability dating back only to the date of filing the petition for reconsideration, if misinterpreted, could encourage cable operators to make such filings regardless of the petition's underlying merits, because it would reduce their refund liability by at least a month, and possibly much longer. This would occur because the cable operator's refund liability goes back potentially to the effective date of the rate rules, i.e., September 1, 1993, for the systems serving most subscribers. If a franchising authority were to seek certification on October 1, 1993, and the cable operator were to challenge that certification request on the basis of effective competition on October 31, 1993, the provision could be read to limit the operator's refund liability to October 31, 1993. This would remove the refund liability for a two-month period, even if the operator were to ultimately lose the effective competition challenge. Petitioners are correct in pointing out this unintended and inappropriate possibility. Therefore, cable operators filing an effective competition challenge will be subject to the same refund liability as all other systems should their challenges prove unsuccessful, and § 76.911(c)(3) of the Commission's rules is clarified accordingly.

4. Basic Tier Definition

78. Section 3(b)(7)(A) of the 1992 Cable Act provides that the minimum contents of the basic service tier should include: all signals carried in fulfillment of the requirements of sections 614 and 615 of the Communications Act; any public, educational, or government access channels required by the franchise; and any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. The Rate Order stated that this statutory definition of the basic service tier preempted provisions in franchise agreements that require additional services to be carried on the basic tier.

79. A number of municipalities argue that this interpretation is inconsistent with preexisting sections of the Communications Act, added by the 1984 Cable Act, that have not been superseded by the 1992 Cable Act, such as section 625(a)(1)(B), relating to the modification of existing franchise obligations. Petitioners argue that because this provision permits a franchising authority to prohibit a cable operator from changing the "mix, quality or level" of cable services required in a franchise unless the cable operator demonstrates that such "mix, quality or level" of services remain the same after any modification, a franchising authority could prohibit the retiering of programming from basic to another tier.

80. Petitioners also argue that because section 624(b)(2)(B) of the Communications Act allows franchising authorities to enforce requirements "for broad categories of video programming or other services," Congress did not intend to preempt preexisting franchise agreements. In any event, they contend, requirements in an existing agreement are those to which the franchising authority and the cable operator have already agreed, and were not imposed unilaterally by the franchising authority.

81. One petitioner argues that the 1992 Cable Act amended the 1984 Cable Act specifically to permit franchising authorities to take into account the number of channels on a tier in deciding whether to renew a franchise. The petitioner points out that, in the 1992 Cable Act, Congress specifically omitted the 1984 Act's prohibition against taking into account the "level" of services for renewal purposes, so that, it argues, franchising authorities now can require a certain level of services, *i.e.*, specify the number of channels on the basic tier, in renewal negotiations.

82. Petitioners also argue that because section 625(d) allows cable operators to rearrange service from one tier to another if rates for these tiers are not subject to regulation, the above reasoning is logical only with respect to cable operators not subject to rate regulation. The argue that this provision would be unnecessary if all cable operators could freely move services from one tier to another.

83. In response to these assertions, a number of cable interests argue that the elements of basic service should be at the cable operators' discretion, and not imposed as part of a franchise agreement. As one such petitioner points out, the franchising authority could require so many basic channels that they would control the rates of all satellite-delivered programming services and have the power to control retiering, which would nullify the Commission's sole jurisdiction over cable programming services in section 623. The municipalities reply that if cable operators have the sole discretion to add satellite-delivered programing to the basic tier, this already eliminates the Commission's sole jurisdiction over those channels.

84. We reaffirm the Rate Order's preemption of franchise agreements that purport to mandate distribution of additional services on the basic tier beyond the new statutory requirement. The legislative history of the 1992 Cable Act is unequivocal that Congress intended to give cable operators the right to determine the elements of the basic tier, subject to the minimum

statutory requirements. We believe that this flexibility is unaffected by the franchising authority's new right to take into account the "level" of services at renewal time. Indeed, the Senate Report indicates that section 626 was amended to "allow the franchising authority to consider the level of service provided *over the system* throughout the franchise term." Thus, it appears that the franchising authority's right to consider the "level" of services does not relate only to the basic tier, or to specific channels, but to the system capacity as a whole.

85. The fact that Congress left section 625 unchanged suggests that a franchising authority may deny a modification request, based on the franchising authority's determination that the cable operator has changed the "mix, quality and level" of services required by the franchise. But this determination must similarly relate to the system as a whole, not just to the specific composition of the basic tier. Thus, the municipalities have not presented any persuasive arguments that Congress intended to grant them discretion over the basic tier composition.

86. The affirmative authorization in section 625(d) of the Communications Act for system operators to switch services among unregulated service tiers, although of less import following adoption of the 1992 Act, is not inconsistent with the view expressed in the Rate Order and in the Conference Report that, in the regulated environment, the basic tier is to be composed of the broadcast and access channels specified in the statute and such other services "that the cable operator may choose to provide." While we are bound to take into account the comprehensive statutory scheme, to harmonize, if possible, seemingly contradictory provisions, and to construe the statute in a manner that does not render certain provisions superfluous, we must also accord substantial weight to recently-enacted amendments and their legislative history. In this case, that history evinces Congress' intention to displace the franchising authority's discretion over the composition of the basic tier. Allowing franchising authorities to continue to enforce service requirements for the basic tier that are well beyond the statutory requirements would clearly compromise Congress' principal concern in enacting the 1992 Cable Act that cable operators provide local services on a basic tier at reasonable rates. Thus, we affirm our prior conclusion that franchising authorities do not have the authority under the Act to require carriage on the basic tier of channels other than those set forth in the statute.

G. The Price Cap Governing Cable Service Rates

87. In the Rate Order, we determined that rates for regulated cable service would be governed by a price cap mechanism once initial regulated rates were determined either through the benchmark or cost-of-service approaches. Capped rates may be adjusted annually for inflation. In addition, cable operators may pass through to subscribers increases in certain categories of external costs to the extent that such increases exceed inflation: costs of retransmission consent fees incurred after October 6, 1994, other programming cost increases, taxes, and the costs of franchise requirements including PEG access channels. Franchise fees are also accorded external cost treatment. A number of petitioners and responding commenters have expressed concerns about, and/or suggested modifications to, various features of our price cap requirements. We address these concerns and proposals in turn.

1. External Costs

88. General Issues. Several petitioners urge the Commission to adopt suggested overarching criteria for determining eligible categories of external costs. They contend, for example, that operators have substantial bargaining control over programming costs, franchise fees, and other franchise requirements, and that only costs that are beyond the control of the cable operator should be subject to external treatment. Several telephone companies contend that telephone companies subject to price cap requirements can only pass through costs triggered by administrative, legislative, or judicial action beyond the control of the carriers, and that we should limit passthrough of external costs to the same extent that we permit telephone companies to do so. Telephone companies also urge that we incorporate a sharing feature in the price cap mechanism for cable service similar to the one that we have included in the price cap rules for telephone carriers. NATOA argues that external treatment should only be accorded to franchise fees because the Commission's benchmark formula generally reflects all costs other than franchise fees and that allowing external treatment for other costs would permit operators to recover such costs twice.

89. As indicated, our price cap governing cable service rates accords external cost treatment to costs of retransmission consent fees incurred after October 6, 1994, other programming cost increases, franchise fees, taxes, and the costs of franchise requirements including PEG access channels. We adopted each category of external costs based on the considerations pertaining to the category as discussed in the Rate Order. As modified and clarified below, we believe that these external costs will permit an initial implementation of cable service rate regulation that will achieve the goals for that regulation expressed in the Rate Order. These categories of costs will broaden cable operators' opportunities to recover the actual changes in such costs, instead of relying on a general inflation adjustment, while at the same time not being so extensive as to undermine the benefits of a price cap mechanism as the primary method of regulation of cable service rates. We will also monitor the impact of these categories of external costs and will modify and refine them as necessary to assure that, as a whole, they will achieve our goals for rate regulation of cable service. For these reasons, we do not find it necessary to adopt the more restrictive overarching standards for determination of external costs sought by some petitioners.

90. More particularly, we do not believe that the cable operators' control over the costs in question should be the exclusive criterion for selection of external costs. Thus, as discussed in the Rate Order, other objectives such as assuring the continued growth of programming diversity may dictate different criteria. Telephone companies have failed to advance a sufficient reason why we should adopt as an overriding policy goal achieving parity in price cap mechanisms for the two industries. Instead, our price cap requirements for cable and telephone services are, and should be, based on the respective, separate considerations discussed in the proceedings in which we adopted those respective requirements. In addition, under the price cap mechanism changes in external costs are compared to inflation. Increases in external costs more than inflation will be reflected in rate increases, and decreases in such costs and increases less than inflation will be reflected in rate reductions. Thus, contrary to NATOA's assertions, there is no double recovery for costs accorded external treatment. For these reasons, we will not change the scope of our external cost treatment.

91. Retransmission Consent Fees. In the Rate Order, we observed that not treating retransmission consent fees as external to the price cap may provide

operators the greatest incentive to drive a hard bargain with broadcasters over the value of broadcast signals. However, we recognized that such an approach could risk the non-carriage of broadcast signals if an operator and broadcaster are unable to reach a final agreement regarding a retransmission consent fees. In addition, we concluded that treating retransmission consent fees as external to the price cap would provide greater assurance that broadcast signals are carried because operators could recover these costs through increased rates for cable service. The Commission thus determined that providing external treatment for increases in costs associated with retransmission consent fees best balances these competing interests. However, in order to prevent any sudden increase in subscriber rates due to initial retransmission consent fees, we provided that external treatment for retransmission consent fees would commence after October 6, 1994. External treatment is limited to the new or additional fees beyond those already being charged on that date.

92. Cable operators agree with the Commission's decision to treat costs associated with retransmission consent fees as external to the price cap. However, they dispute the justification for delaying such treatment of retransmission consent fees until October 6, 1994, as described above. Blade contends that although operators have long carried broadcast signals, cable service rates historically have not reflected a significant "value" for these signals. If we preclude operators from recouping these costs, Blade threatens to drop a number of broadcast signals demanding retransmission consent fees.

93. We are not persuaded that we should alter the starting date for external cost treatment of retransmission consent fees. As we stated in the Rate Order, delaying the external treatment of retransmission consent fees until that date will protect consumers from abrupt rate increases in response to new retransmission consent arrangements occurring on or after October 6, 1993. We believe that protecting consumers from abrupt rate increases fulfills our statutory mandate and should be accorded greater weight than the fact that retransmission consent fees are new costs to cable operators. Delaying the starting date for external cost treatment for retransmission consent fees also is more likely to encourage cable operators to negotiate a fair price for retransmission consent fees. We do not believe that this will lead to significant numbers of cable operators dropping stations instead of seeking to negotiate a fair price for retransmission consent fees. In addition, as stated in the Rate Order, we believe that cable rates already reflect the value of broadcast signals offered to subscribers. Thus, to some extent, retransmission consent fees merely reflect compensation to broadcasters already received by cable operators from subscribers. Accordingly, we will not alter the starting date for external cost treatment for retransmission consent fees. As we stated in the Rate Order, we will closely monitor initial retransmission consent agreements for their potential impact upon subscriber rates. If additional measures appear necessary to protect subscribers from unwarranted increases in the rates for cable service on the basic tier, we will reexamine this treatment of retransmission consent fees.

94. System Upgrades. In the Rate Order, we concluded that we should not give external treatment to costs of system improvements. We stated that such expenditures are likely to be significant and, if automatically passed through, could lead to substantially increased rates. We also stated that local authorities should be permitted to carefully weigh the costs and benefits of network improvements. We then held that costs of network improvements could be recovered through cost-of-service showings to the extent they cannot be recovered through rates regulated under the price cap scheme. We stated that we would monitor the effects of treating network improvement costs this way and, if it appeared that this treatment thwarts the development of new technologies and services, would review our decision as necessary.

95. Cable operators urge the Commission to accord external treatment for costs associated with upgrades and other capital improvements. They state that the Commission's benchmark/price cap mechanism does not account for upgrade costs. Thus, they assert, operators will be unable to recover costs of expansion of systems, except through cost of service showings, despite the Commission's stated goal to "permit the continued growth of [cable] services." Comcast argues that requiring operators to recoup such costs only through cost-of-service showings is an untenable option, such that operators may choose not to undertake upgrade expansions at all. These parties suggest that we permit upgrade costs to be treated externally, subject to evaluation by the local authorities.

96. Other petitioners support the current treatment of cable system upgrade costs, as described in the Rate Order. These petitioners argue that cable operators should not be permitted to recover these costs externally from the benchmark/price cap mechanism because upgrade costs are reflected in the survey data on which the benchmark formula is based. In particular, they note that systems which upgraded their plant and operations prior to September 30, 1992 were sampled in the survey and the rates resulting from such upgrades are represented in our benchmark approach. Thus, these commenters claim, permitting external treatment for such costs would result in operators' double-recovery of upgrade costs. They also contend that these costs are within the control of operators because, unless required by regulators or authorities, the final decision whether to expand the system naturally rests with the cable operator. NATOA argues that permitting external treatment for upgrade costs may not be in the public interest because only a few subscribers may receive the benefits related to a system expansion whose costs will be subsidized by all subscribers. GTE argues that if the substantial costs associated with system expansions are permitted to be passed-through directly to subscribers, cable systems will have no incentive to make only prudent investments in plant and equipment. BellSouth is concerned primarily that permitting operators to pass-through upgrade costs will allow them to recoup the costs of establishing new non-regulated services, such as two-way communications services, within the rates for regulated services.

97. As stated in the Rate Order, upgrade costs can be significant and could substantially affect cable rates. After reviewing the petitions for reconsideration, we continue to believe that such costs should be evaluated using cost-of-service principles, and should not simply be passed through to subscribers where local franchise authorities have the opportunity for only a cursory review. System upgrades will normally involve capital expenditures that will be recovered over a number of years. A determination of the appropriate recovery of such costs, including a fair rate of return and the proper allocation of costs to regulated and unregulated services, necessarily involves cost-of-service issues. Accordingly, we believe that establishment of any external treatment for upgrade expenditures should await adoption of cost-of-service standards that can then govern any external treatment of such costs. In the Cost-of-Service Proceeding we are also examining streamlined treatment of

upgrade costs. If adopted, this could provide a treatment of upgrade expenditures substantially similar to external treatment. We therefore will address in that proceeding whether and how we might establish external treatment for upgrade expenditures. Also, if the upgrade involves a change in the number of channels offered, we are continuing to examine methodologies to take into account the increased costs. In the interim, operators seeking to recover such costs may do so through a cost-of-service showing.

98. Costs of Franchise Requirements. The Cable Act of 1992 requires that in setting basic service rates, we take into account the reasonably and properly allocable portion of, *inter alia:* The cost of satisfying franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise, and the costs of any public, educational, and governmental access programming required by the franchising authority. The regulatory framework for regulation of cable service adopted in the Rate Order took these costs into account in part by providing that the costs of satisfying franchise requirements, including the cost of satisfying franchise requirements for local, public, educational, and governmental access channels, would be accorded external cost treatment. We stated that these costs are largely beyond the control of the cable operator, and should be passed on to subscribers without a cost-of-service showing.

99. On reconsideration, municipalities generally urge the Commission to define narrowly the scope of costs of franchise requirements that cable systems will be permitted to pass-through directly to subscribers as external costs. King County contends that franchise-related costs are not beyond the control of operators in that cable systems bargain actively with authorities over long periods of time over these requirements. Michigan Communities warns the Commission that operators will attempt to turn the Commission's price cap into a "price floor" by characterizing most major franchise-related costs as external costs. It is concerned that operators will attempt to force authorities to permit operators to characterize anything in a new franchise agreement as a franchise requirement entitled to pass-through treatment. It states that operators will seek external cost treatment for all new standards required of operators by law, including customer service standards, technical standards, SEC requirements, local zoning laws, social security payments, and any other legal requirement tightened since the last franchise agreement. NATOA urges the Commission to define the term "costs of franchise requirements" to include only direct and verifiable monetary costs specifically enumerated by a dollar amount in a franchise agreement to satisfy franchise requirements imposed by the authority. In addition, NATOA believes that the Commission should not accord external treatment to franchise-related costs that operators currently provide on a voluntary basis such as customer service-related costs that many operators incur in voluntarily complying with minimum service standards adopted by NCTA. NATOA also argues generally that it is unfair to allow operators to pass-through costs they may currently incur, such as costs incurred to comply with the Commission's recently adopted customer service standards.

100. Cable operators, on the other hand, generally argue that external treatment of franchise-related costs appropriately allows them to recover the costs of items required by local authorities in exchange for franchises, and that such costs are largely under the control of local authorities. NCTA contends that there is no justifiable distinction between franchise-related costs specifically enumerated by a dollar amount within a franchise agreement and those requiring in-kind expenditures. NCTA states that NATOA misunderstands current Commission rules, which permit the pass-through only of increases in external costs that exceed the GNP–PI. Continental asserts that certain costs, particularly PEG access channels and institutional networks, should be treated externally from the price cap because these are clearly traditional franchise requirements. Continental further objects to permitting local authorities to exclude overhead for PEG access channels and requiring operators to spread franchise-related costs over the franchise agreement term. Continental notes that it has expended tremendous funds for customer service; thus, it believes that it should be permitted to recover at least increases in these costs due to new government standards, as permitted under the Commission's current rules.

101. We believe that the scope of costs that are eligible for external treatment as costs of satisfying franchise requirements should be guided by the statutory language indicating that our regulatory framework for the basic service tier should take such factors into account. Thus, such costs include the costs of satisfying franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise, and the costs of any public, educational, and governmental access programming required by the franchising authority.

102. This statutory language should be interpreted in a way that will produce equitable results for operators and subscribers. We believe that this objective will be met by providing that only increases in the costs of complying with services specifically required in the franchise documents will be eligible for external treatment. This will permit local authorities and individual systems to work cooperatively to establish the costs of meeting franchise requirements that will be accorded external treatment. If specifically required by franchising authorities, however, we believe that costs of meeting such requirements should be accorded external treatment. This will include meeting technical and customer service standard requirements that exceed the federal standards and potentially upgrade requirements. The costs of simply complying with federal customer service and technical standards, however, will not be treated as external costs. We believe that this approach will be fair to operators by assuring that they can recover costs of meeting local requirements.

103. Taxes. The Cable Act of 1992 requires the Commission in establishing regulations governing rates for the basic service tier to take into account, *inter alia*, the reasonably and properly allocable portion of taxes and fees imposed by any state or local authority on transactions between cable operators and subscribers, and assessments of general applicability imposed by a governmental entity applied against cable operators or cable subscribers. In the Rate Order, we determined that we met the statutory directive to take general assessments into account by providing for a general inflation adjustment to capped rates that could be expected to recover increases in such costs. We met the statutory directive to take into account taxes imposed directly on the provision of cable television service by providing for external treatment of these taxes under our benchmark/price cap requirements. Thus, our rules provide that increases in state and local taxes applicable to the provision of cable television service are external costs and may be passed-through to subscribers without a cost-of-service showing.

104. On reconsideration, several petitioners request that we afford external treatment to certain California taxes that are imposed on cable

operators in that state. Specifically, these parties ask that the California possessory interest tax be treated as an external cost for purposes of the initial rate benchmarks and future rate increases. They argue that while this levy is not an industry-specific tax, it is nevertheless assessed in a unique manner against cable operators that warrants external cost treatment under § 76.922(d)(2)(i)(A) of our rules. In this regard, they describe the tax as being different from a generally applicable property tax that would be accounted for in the GNP-PI adjustment. Furthermore, they explain that it is a significant tax outside the control of cable operators. One petitioner also requests similar external treatment for the California utility user tax. The utility user tax is described as a local tax on customers of California utilities and cable television service.

105. Our rule concerning external treatment of taxes is formulated to encompass only taxes imposed by state or local authorities on transactions between cable operators and cable subscribers; taxes of general applicability applied against cable operators and subscribers are to be recovered through inflation adjustment to capped rates. This approach is narrowly tailored to protect consumers while assuring that cable operators may recover special taxes applicable to the provision of cable television service.

106. Based on the record before us we are unable to conclude that the California possessory interest tax is, in every instance, the type of tax that is entitled to be passed through to subscribers separately and specifically, rather than accounted for and recovered as part of the GNP-PI inflation adjustment. However, we do not disagree with petitioners that such taxes may be entitled to external treatment on a going forward basis where they are in fact, as CCTA suggests, "in essence and effect" taxes on "transactions between cable operators and cable subscribers." Whether or not they are entitled to this treatment is dependent on the manner of assessment.

107. As CCTA indicates, the proper assessment technique has been the subject of ongoing litigation in California and it appears that different jurisdictions within the state have chosen to apply the tax in different ways so that in some situations the levy may be applied in a common fashion to cable and other businesses whereas in other situations cable may be subject to a relatively unique assessment process. As CCTA's own data indicate, for some systems the levy is nominal in amount and in others it is much more significant. Where the assessment is very directly related to subscriber revenues, such as where the tax is based on a value of intangible assets formula effectively calculated from the operator's income for the provisions of cable service, then such a tax should, we believe, be treatable as a costs subject to "external treatment" on a going forward basis. Where this is not done and the assessment process is not different for cable and other business, we would expect this tax to be one of the costs to be accounted for under the inflation adjustment process. This result is, we believe, consistent with the statutory provisions mandating that our regulations take into account taxes imposed on system operators. Such taxes are clearly beyond the control of the system operator and this process should both avoid unnecessary cost of service showings and create a measure of accountability for the costs imposed.

108. Limitations on External Treatment of Costs of Affiliated Programming. In the Rate Order, we indicated that the pass-through of increases to the program services of affiliated programmers is limited to the lesser of the annual incremental percentage increase in such costs or the GNP–PI. We defined affiliated programmers in the same manner as they are defined for purposes of the program access rules. We indicated that we took this approach with respect to affiliated programming out of concern about the abuses that might occur if we were to permit vertically integrated cable operators to engage in unlimited pass-throughs of programming costs to their subscribers.

109. Subsequently, in the Cost-of-Service NPRM, we offered for comment a proposal to replace the cap on affiliated programming increases with affiliate transaction safeguards that would prevent cable MSOs from imposing unreasonable programming costs on regulated cable subscribers. As a possible safeguard, we proposed to prescribe the methodology for determining the value of such costs that could be recovered in regulated cable service rates. In particular, we asked whether we should require cable operators to record affiliate transactions at prevailing company prices offered in the marketplace to third parties, whenever the supplying affiliate has established such prices, or at fair market value.

110. Cable operators and programmers contend that the cap of affiliated programming increases will adversely affect the cable programming marketplace. They argue that cable systems will not want to absorb affiliated program increases and will therefore either drop such services or will offer them a la carte. In either case, they claim that subscriber programming choice will suffer. Affected affiliated programmers, they point out, would include entities that provide regional sports programming, minority entertainment programming and non-profit, public affairs programming (*i.e.*, C–SPAN). They also believe the restriction will hurt the ability of affiliated programmers to compete with nonaffiliated program services and will discourage investment in the development of new, high quality program services. They further assert that many innovative program services exist today because cable MSOs were willing to invest in their services at critical stages of development.

111. Petitioners also challenge the need for such a restriction and argue there is no evidence in the record to support adoption of such a rule. They regard the Commission's cost-shifting concerns as theoretical. In practice, under the new regulatory regime, they believe cable MSOs will be more concerned with increasing subscribership than with obtaining any marginal benefit from unreasonable cost-shifting. Some petitioners also assert that the Commission's program access rules, and other rate evasion measures provided for under the 1992 Cable Act, adequately protect against any objectionable cost-shifting behavior without the need for a limit on the recovery of affiliated programming costs.

112. Petitioners propose several different approaches to the treatment of affiliated programming costs. For example, Turner Broadcasting suggests that we only apply our affiliated programming pass-through restriction in cases where there is evidence of discriminatory pricing to affiliated systems and when a program service is primarily distributed to affiliated cable systems. On the other hand, Discovery Communications requests that we allow complete external recovery of all programming cost increases above GNP–PI, regardless of affiliation. Other petitioners suggest that we adopt some sort of transactional safeguards similar to the proposal in the Cost-of-Service NPRM. TCI, Colony Communications and Liberty Media suggest that we allow cable operators to use prevailing company prices, if offered in the marketplace to third parties, to determine programming costs that may be passed-through. Another proposal by Viacom International would permit cable operators to pass-through as affiliated programming costs at least the

average increase in nonaffiliated programming expense experienced by systems of comparable size without a GNP–PI cap. Telephone companies and municipalities support our treatment of affiliated programming and generally oppose any further expansion of our external cost categories.

113. Where rate regulated industries have the ability and incentive to recover costs of unregulated activities from regulated service subscribers, we traditionally have established safeguards to prevent such improper cost shifting. Accordingly, we conclude that we should maintain in place some type of safeguard.

114. However, we are persuaded by petitioners that a cap on affiliated programming charges could limit operators' ability to recover otherwise fair increases in the costs of programming that exceed inflation. As we indicated in the Rate Order, we attach great importance at this stage of rate regulation to the continued growth of programming. On balance, we thus believe that we should adopt an initial regulatory approach that is somewhat more liberal in permitting external treatment of affiliated programming costs. Specifically, we will replace the cap on affiliated programming costs with affiliate transaction requirements of the type proposed by some petitioners and additionally proposed in the Cost-of-Service NPRM. Cable operators may pass-through the costs of affiliated programming that exceed inflation as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming. We are amending § 76.922(d)(2)(vi) to reflect this change. We will further examine this issue based on the record obtained in the Cost-of-Service Proceeding and we may refine these requirements in that proceeding, if necessary.

115. We will not modify the attribution standard for identifying affiliated programming services as was suggested by Liberty Media. We find that use of the 5 percent attribution standard that was adopted in the program access proceeding is appropriate for determining when our affiliate transaction requirements described above should come into play. This measure of affiliation will capture most instances in which ownership relationships between programmers and cable systems could create incentives to pass through excessive costs to cable subscribers. Also, this relatively inclusive attribution standard is warranted in light of our decision to allow the pass-through of reasonable affiliated programming cost increases above the rate of inflation. As with our affiliated programming limitations generally, we may further examine this ownership affiliation standard in the Cost-of-Service Proceeding.

2. Starting Date for External Cost Treatment

116. In the Rate Order, we determined that for all categories of external costs, other than franchise fees and retransmission consent fees, changes in external costs shall be measured from the date on which the system becomes subject to regulation, or 180 days from the effective date of our regulations, whichever occurs first. Any changes in external costs occurring prior to that date, including those since September 30, 1992, will not be accorded external treatment. For those systems whose base rate is determined by reference to September 30, 1992 rates, the Commission determined that the permitted rate will be calculated by adjusting rates as of that date forward only for inflation until the date of regulation or 180 days from the effective date of regulation, whichever occurs first. We recognized that precluding external treatment for cost increases over this initial period may unnecessarily encourage cost-of-service showings by those operators who have experienced high external costs during the interim. However, we stated that this approach will save operators the burden of identifying external costs since September 30, 1992. We determined that this approach, instead of permitting addition of external costs from September 30, 1992, would best balance administrative practicality against permitting operators the opportunity automatically to recover external costs.

117. Several cable operators object to the starting date for external treatment of costs established in the Rate Order. These commenters argue generally that this approach creates a "gap" period of between one year and 18 months, during which increases in external costs above inflation incurred may never be recovered. Thus, these parties contend that initial benchmark-determined rates may not be compensatory. Discovery argues that the starting date for external cost treatment established in the Rate Order may not serve the public interest goal of expanding cable service because many operators may hesitate to incur certain external cost increases prior to the initial date of regulation, such as programming costs associated with additional channels. These commenters generally favor eliminating the "gap" by establishing a single date on which external treatment of appropriate cost increases may begin, *e.g.*, October 1, 1992, or the effective date of our rules.

118. Under our starting date for external cost treatment, cable operators whose rates are determined by reference to September 30, 1992 rates will be permitted to adjust those rates forward by inflation to the initial date of regulation, or 180 days from the effective date of our regulations, whichever occurs first, and thereafter may recover increases in external costs. Increasing rates by a general measure of inflation should, on average, permit most cable operators to roughly approximate increases in costs since September 30, 1992. In any event, operators whose costs have increased more than inflation may attempt to recover the costs experienced since September 30, 1992 through a cost-of-service showing. Requiring or permitting external cost treatment through the benchmark process since September 30, 1992 may provide a more accurate measure of external costs for most cable operators but would entail considerably more administrative burden on operators and regulators. In particular, such an approach would entail detailed identification of costs back to that time. In addition, because regulation will be taking place on a tier basis, it would be necessary to track changes in external costs on a tier basis and account for service restructuring and retiering that may have occurred since that time. It would also be necessary to apply our cost accounting and cost allocation requirements back to September 30, 1992. We believe that the administrative difficulties involved in establishing September 30, 1992 as the starting date for external cost treatment outweighs any greater accuracy involved. Accordingly, we will retain the starting date for external costs established in the Rate Order.

3. Frequency of Rate Adjustments Based on Increases or Decreases in External Costs

119. In the Rate Order, we provided for an annual inflation adjustment to capped rates. We also have indicated in response to formally submitted questions that cable operators should file rates increases no more than once per year.

120. Cable operators argue that permitting rate adjustments based on legitimate changes in external costs only once per year unfairly burdens operators by forcing them to absorb these costs until the next opportunity to file for a rate increase. Cablevision, for example,

argues that this "lag" time can be more than a year in some instances. These operators thus argue that cable systems should be permitted to file for rate increases based on changes in external costs as such costs arise. These commenters express particular concern over recovering as soon as possible the programming costs associated with adding a new channel. NATOA, on the other hand, expresses general satisfaction with our current rules permitting such rate filings only annually.

121. Limiting capped rates to annual adjustments for increases in external costs clearly would involve lesser administrative burdens on operators and regulators than more frequent filings. On the other hand, annual filings would require cable operators to forgo recovery of external costs for up to one year, which could create undue hardships should a system experience a significant increase in costs mid-year. In addition, we note that in an unregulated environment cable operators have generally instituted rate increases only on an annual basis. And, cable operators have incentives to reduce consumer concern over rate increases by not instituting frequent rate increases. For these reasons, we conclude that we need not limit rate increases on account of increases in external costs to an annual basis, although we believe that in the vast majority of such cases increases will occur only once a year.

122. Under our external cost requirements, however, increases in external costs are permitted to be reflected in rates only to the extent they exceed inflation. Increases in external costs thus must be compared to the inflation index. The GNP–PI inflation index is released quarterly and is later updated. We provide that operators may file rate increases no more frequently than quarterly on account of increases in external costs. We also require that where rate increases are made based on a comparison to the initial quarterly inflation index, adjustments must be made in subsequent rate filings to reflect the final index. Our FCC Form 394 and instructions, to be released in the near future, will prescribe the precise manner of making these adjustments. We also will monitor the flexibility we give today to cable operators to make relatively frequent rate increases, and stress that we can impose more stringent limitations at a later date if necessary to protect consumers.

123. We also recognize that cable operators may experience decreases in external costs on a going-forward basis. Prompt reflection of such decreases in rates would benefit consumers. At the same time, a requirement for immediate rate filings to reflect decreases in external costs could significantly increase burdens on operators and regulators. Accordingly, we will not require such rate filings. Instead, we require that any filing to reflect increases in external costs or the annual inflation adjustment must also reflect any decreases in such costs that have occurred over the same period. In addition, we require that operators file revised rates to reflect decreases in external costs no later than one year from when such decreases occur. These requirements will assure that consumers will generally receive the benefits of decreases in external costs within a reasonable time frame without imposing significant burdens on operators.

IV. Second Report and Order

124. While the Rate Order established a benchmark methodology based on the rates of systems subject to effective competition, the Further Notice sought comment on whether cable systems with less than 30 percent penetration should be included in the "competitive" sample. When data from all systems in the competitive sample were used, the competitive differential was calculated at approximately 10 percent. However, when data from systems with less than 30 percent penetration were excluded from the analysis, a competitive rate differential of roughly 28 percent was calculated. This result occurs because many of the low penetration systems have rates which were significantly above the rates of other systems in the "competitive" sample.

125. The Further Notice queried whether such low penetration systems could be lawfully excluded from benchmark calculations, given the 1992 Cable Act's definition of such systems as being subject to effective competition. Comment was also sought on whether, as a policy matter, systems in low penetration areas should be excluded or given less weight in calculating the competitive rate differential in order to produce a "better" measure of that differential. In addition, comment was sought on how to redefine the benchmark formula and how to phase in any further rate reductions if exclusion of such systems were found to be lawful and appropriate. Finally, comment was sought on the impact on consumers and the industry, and the proper application of, any new competitive rate differential.

126. Most commenters contend that the Commission, having chosen to use a benchmark that is designed to approximate the rates that systems subject to effective competition charge for cable service, must use the statutory definition of systems subject to effective competition. Other commenters, however, argue that the Commission is bound by this definition only when determining which systems are exempt from rate regulation.

127. The question at issue, then, is whether the Commission may adopt a definition of systems subject to "effective competition" for purposes of establishing its benchmark rate formula that differs from the definition of that term set forth in the statute. As various commenters noted, this issue is quite similar to the question decided in *American Civil Liberties Union* v. *FCC*, 823 F.2d 1554 (D.C. Cir. 1987) ("*ACLU*"), *cert. denied*, 485 U.S. 959 (1988). In *ACLU*, the court held that, notwithstanding the legislative history that seemed to support the Commission's authority to redefine "basic cable service," the statutory definition was itself clear and unambiguous and could not be overridden by legislative history. *Id.* at 1567, 68. As numerous commenters point out, the 1992 Cable Act also defines "effective competition" in a manner that is clear on its face. Moreover, the commenters have pointed to no legislative history that suggests that the Commission has discretion to redefine that term.

128. We thus conclude that the statutory definition controls when determining reasonable or unreasonable rates pursuant to section 623 of the Act based on our benchmark approach. In particular, we believe that, to be most consistent with the clear statutory language, cable systems with less than 30 percent penetration should continue to be included in the sample of systems subject to effective competition which is used to calculate the benchmark rates.

129. Despite the clear statutory language, various commenters argue that rates for low penetration systems, should be excluded from the benchmark formula calculation, because such rates are allegedly disproportionately high. Even if the Act's "effective competition" definition were not binding on the Commission, however, the commenters have not presented convincing arguments as to why low penetration systems should be excluded from the sample. While many commenters speculate about various reasons why systems with less than 30 percent penetration might have higher rates than other competitive systems, there is no factual support for their contentions or upon which the Commission could conclude that exclusion of rates for such systems from the benchmark would produce a "better" measure of the

competitive rate differential. In addition, some commenters suggest that defining low penetration systems as subject to effective competition would parallel the antitrust theory that companies with less than 30 percent of the market share do not have monopoly power. This theory holds that without monopoly power, a firm lacks the power to raise prices significantly above cost for any significantly period of time. Thus, to the extent that a cable company with less than 30 percent penetration is unable to exert substantial market power, its rate should approximate the rates charged by competitive systems, which also are unable to raise prices substantially above costs. This theory also is consistent both with Congress' concern that cable systems, in general, were accumulating monopoly power which led to monopoly profits and with its simultaneous decision to include systems with less than 30 percent penetration when defining which systems face effective competition. See sections 2(a) and 3(a) of the 1992 Cable Act.

130. Moreover, it would not serve the public interest to exclude low penetration systems from the benchmark calculation, as suggested by some commenters, merely because such exclusion would result in larger rate reductions which those commenters seek. Benchmark rates which are 10 percent below prevailing rates in the cable industry will substantially comply with the congressional mandate to ensure that subscribers pay reasonable rates for cable service. Future surveys will gather information on competitive rates as well as system costs, and if greater rate reductions appear appropriate on the basis of such additional information, the Commission will be in a better position to decide the issue at that time. Now, however, based on the instant record, we believe that a more cautious approach in setting cable rates is the better course.

131. Finally, some petitioners and commenters argue that the universe of systems subject to effective competition used in calculating the benchmark rates should not include municipal systems, systems competing with municipal systems or systems involved in head-to-head competition that have been operating for less than five years—even though each of these systems faces effective competition as defined in the Act. These parties contend that municipal systems do not charge "competitive" rates because they are subsidized by taxpayers, share costs with other municipal services, and do not make a profit. NCTA purported to support these contentions with studies showing that a few municipal systems were subsidized and/or not making a profit. However, these municipal systems responded that the information and assumptions used in the studies were not accurate and that NCTA's conclusions were unfounded. Some parties proffered a study concluding that overbuild systems in operation for less than five years charge lower rates than other overbuild systems. However, even if true, this does not mean that these systems are not viable enterprises in the long term, *i.e.*, making a "profit" of some kind. Indeed, there is nothing in the record to support the contentions that overbuilt competitive systems of any particular age are engaged in "price wars," and are charging rates that do not allow them to recover costs or otherwise provide for viable operation. Thus, petitioners' speculation concerning the costs and profits of municipal and overbuild systems is not sufficient to warrant their exclusion from the effective competition sample data—even if the Commission had the discretion to do so. As thoroughly explained in the preceding paragraphs, we do not believe we are free to change the definition of systems subject to effective competition merely because petitioners might devise a definition they think is more appropriate. Since Congress defined municipal systems and overbuilds as subject to effective competition, we will not exclude them from our benchmark analysis.

VII. Final Regulatory Flexibility Act Analysis

132. A final Regulatory Flexibility Act statement was published in the Rate Order at paragraphs 564–574. That analysis remains the same.

X. Ordering Clauses

133. *It is further ordered,* That part 76 of the Commission's rules, 47 CFR part 76, is amended, as indicated below.

134. *It is further ordered,* That the Petitions for Reconsideration are granted in part, denied in part, and to the extent that Petitions raise issues unresolved in this Rate Reconsideration, they will be disposed of in future orders.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47, part 76 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; 532; 533; 535; 542; 552; 554, as amended, 106 Stat. 1460.

2. Section 76.911 is amended by revising paragraph (c)(3) to read as follows:

§ 76.911 Petition for reconsideration of certification.

* * * * *

(c) * * *

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge or permitted equipment charge which were collected from the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

* * * * *

3. Section 76.922 is amended by revising paragraph (d)(2)(vi) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tier.

* * * * *

(d) * * *

(2) * * *

(vi) Adjustments to permitted per channel charges on account of increases in costs of programming obtained from affiliated programmers that exceed inflation as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

* * * * *

4. Section 76.931 is revised to read as follows:

§ 76.931 Notification of basic tier availability.

A cable operator shall provide written notification to subscribers of the availability of basic tier service by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification shall include the following information:

(a) That basic tier service is available;

(b) The cost per month for basic tier service;

(c) A list of all services included in the basic service tier.

§ 76.942 [Amended]

5. Section 76.942(c)(1) is amended by removing the reference to "June 21, 1993", and by adding "September 1, 1993", in its place.

§ 76.951 [Amended]

6. Section 76.951(b)(4)(i) is amended by removing the reference to "June 21, 1993", and by adding "September 1, 1993", in its place.

7. Section 76.953 is amended by revising paragraph (a) to read as follows:

§ 76.953 Limitation on filing a complaint.

(a) *Complaint regarding a rate in effect on September 1, 1993.* Notwithstanding paragraph (b) of this section, a complaint regarding a rate for cable programming service or associated equipment in effect on September 1, 1993, must be filed by February 28, 1994.

* * * * *

[FR Doc. 93–21376 Filed 9–1–93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-266; FCC No. 93-428]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rule Making regarding implementation of the Cable Television Consumer Protection and Competition Act of 1992. The First Order on Reconsideration, Second Report and Order segment of this decision may found elsewhere in this Federal Register. The Third Notice of Proposed Rule Making segment proposes rules governing rates for the addition or deletion of channels to regulated cable service; rates for cable systems that completed rebuilds before regulation; consistent rate-setting approaches for all regulated tiers; and rates for cable services offered by systems that upgrade pursuant to franchise agreement. This action will provide notice to the public that the Commission intends to amend its rate regulations governing regulated cable services. This action is intended to provide a record on which the Commission can establish requirements governing the regulated cable service.

DATES: Comments due September 30, 1993; reply comments due October 7, 1993.

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

FOR FURTHER INFORMATION CONTACT: Bruce Romano, (202) 632-5414; Beverly McKittrick, (202) 632-5414; Jennifer A. Manner, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice

1. In this Notice, we seek comment on:

(1) The appropriate methodology for use of the benchmark to adjust capped rates when channels are added or deleted from a regulated tier;

(2) Whether we should permit cable operators who have completed rebuilds immediately prior to regulation, and whose rates are below benchmark level, to raise their rates to the benchmark;

(3) Whether we should permit cable operators to elect either the benchmark or cost-of-service approach for different tiers of regulated service after the initial period of rate regulation; and

(4) Whether we should permit external cost treatment for costs of upgrades required by local franchise authorities, and, if so, whether local or federal standards should govern rate adjustments based on costs of such required upgrades.

I. Adjustment to Capped Rates Because of Additional or Deletion of Channels

2. The Rate Order provided that cable operators may pass-through, after the initial regulated rate is determined, any increases in programming costs incurred for regulated services that exceed inflation. The Rate Order, however, did not specify the methodology for using the benchmark approach to determine rates when channels are added or deleted from service offerings.

3. Several cable operators and programmers request further guidance on how an operator seeking to add channels will be able to reflect associated programming costs in rates. They argue that the current benchmark formulation does not allow cable operators to charge an amount sufficient to cover costs for programming to fill new channels, creating disincentives for the addition of new facilities and services that could benefit subscribers. Programmers argue that these disincentives encourage the offering of programming on an a la carte basis. They point out that the benchmark rate applicable to all channels decreases as the cable operator adds channels, and that as the number of channels increase, the break-even cost of any new programming substantially decreases. They argue that a declining per channel benchmark rate as channels are added discourages the development and carriage of higher-quality and higher-cost programming. These parties thus urge the Commission to clarify that channels added by a cable operator after the implementation of rate regulation would not alter the capped rate for existing channels. They further urge that cable operators be permitted to adjust the price of the regulated tier to which the channels are added by an amount reflecting the cost of the new programming plus a reasonable rate of return.

4. Under the regulatory framework adopted in the Rate Order, cable operators may elect between the benchmark and cost-of-service approaches for setting initial regulated rates. Cable operators may use either of these approaches for setting new regulated tier rates when channels are added to, or deleted from, either the basic or cable programming services tiers. In the Cost-of-Service Proceeding we are considering requirements that will govern rates for cable service based on costs, including when channels are added or deleted from regulated tiers. In the Rate Order, as indicated, we did not provide specific guidance on how to adjust rates when channels are added or deleted for those operators seeking to use the benchmark approach for rate setting instead of cost-of-service showings. We are therefore offering for comment several approaches to use of the benchmark to determine adjustments to capped rates when channels are added or deleted.

5. We tentatively conclude that any methodology we adopt should achieve the goals of protecting consumers from unreasonable rates while assuring the continued growth of the cable industry and the additional services that it can provide to subscribers. Thus, the methodology that we select should provide sufficient incentives for cable operators to invest in continued growth of cable television service while not permitting operators to raise rates to unreasonable levels. We solicit comment on these goals and on the extent to which the alternative methodologies described below, or other methodologies, will permit achievement of these objectives.

6. One proposed methodology for use of the benchmark to adjust capped rates when channels are added or deleted provided that the charge should consist of the sum of: 1) the current permitted charge for the existing channels on the tier; and 2) a charge for the new channels consisting of the benchmark rate for the total number of channels on the tier multiplied by the number of new channels. We tentatively conclude that we should reject this approach, despite its apparent ease of calculation. First, we note that this approach would permit tier pricing above economies of scale observed in the industry survey and reflected in the benchmark. Additionally, there is no apparent analytical or empirical basis for using the benchmark per channel rate for only the new channels on a tier and pricing the old channels on the basis of the pre-upgraded rate. Furthermore, we are not certain that this methodology would work for determining the new permitted rate associated with channel deletions. In addition, this approach could result in significantly higher rates than other options. We solicit comment on our tentative conclusion not to adopt this approach.

7. A second approach would be to require that the new permitted rate for a regulated tier with added or deleted channels would be the benchmark per channel rate based on the new number of channels on the system multiplied by the number of channels on the tier. This

the number of channels on the tier. This approach could require that systems with rates above the benchmark reduce them to the benchmark level when channels are added, including for existing channels. At the same time. It would permit systems with rates below the benchmark to come up to the benchmark level when channels are added. This approach could also be applied to adjust rates when channels are deleted. We tentatively conclude that we should not adopt this approach because it would create substantial disincentives for cable operators with rates above the benchmark to add channels. Conversely, it could create undue incentives for systems with below benchmark rates to add channels, permitting substantially increase rates. We solicit comment on this tentative conclusion.

8. A third approach would be to require that the new permitted per channel rate be the existing permitted per channel rate adjusted for programming expense, as described below, and adjusted to reflect the same proportionate per channel rate increase or decrease observed in the benchmark curve. Under this option, the new permitted per channel rate would not directly reflect the benchmark rate but only the benchmark's proportionate increase or decrease in per channel rates. For example, if the benchmark rate per channel decreases 3% based on the number of channels the cable operator is adding to a regulated tier, then the cable operator's new per channel rate will also reflect a 3% decrease from current levels, separate from any adjustments for programming expense or other external costs. Thus, this methodology would permit capped rates to maintain their relative position above or below the benchmark, prior to adjustments for external costs.

9. We believe that there may be several benefits to this approach. Maintaining the relative position of current rates to benchmark rates is consistent with the overall treatment of above and below benchmark systems envisioned in the Rate Order. Thus, in the Rate Order we did not require all systems with above benchmark rates to lower rates to the benchmark, or permit those with rates below the benchmark to come up to the benchmark. Under this methodology, these distinctions would be preserved. At the same time, the new per channel rate would reflect the same proportionate per channel rate decreases observed in benchmark rates. This would benefit subscribers by requiring that rates reflect the same efficiencies and economies of scale observed in benchmark rates. Accordingly, we tentatively conclude that we should adopt this third approach.

10. In the Rate Order, we stated that we would permit cable operators to pass through to subscribers increases in programming costs on a going forward basis. We believe that this determination should apply not only to increase in programming costs for channels offered as of the initial date of regulation but to programming associated with additional channels. This will preserve incentives for cable operators to provide additional programming services to subscribers. Accordingly, we further tentatively conclude that under the methodology for application of the benchmark to determine rates when channels are added or deleted, we should provide that cable operators may recover the actual increased cost of programming incurred when regulated channels are added to a regulated tier, and that rates must reflect any decreases in programming costs, measured on a per channel per subscriber basis.

11. Benchmark rates per channel presumptively include programming costs because it is reasonable to assume that the rates on which the benchmark is based were set at a level that enabled cable operators to fully recover costs, including those incurred for programming. Therefore, if we permit cable operators to pass-through programming costs when channels are added, and also permit recovery of the full capped rate per channel, the operator would receive a double recovery of programming expense—the actual amount associated with the channel additions and the amount already included in the capped per channel rate. Accordingly, we tentatively conclude that we should include in our methodology a programming offset for channel additions and deletions that will preclude this double recovery.

12. To illustrate, under the above tentative conclusions, in order to use the benchmark to determine new permitted rates when channels are added or deleted from a regulated tier, cable operators would first identify the level of programming costs for the tier on the initial date of regulation on a per subscriber per channel basis and subtract it from the current permitted per channel rate. The operator would then determine the percentage difference between the benchmark per channel rate for the existing number of channels and the benchmark per channel rate for the new number of channels. This percentage change would then be applied to the previously determined current permitted per channel rate minus programming expenses. The operator would then add its actual programming expense (for both the old and the new channels) determined on a per channel per subscriber basis to the "base" to obtain the new permitted per channel rate. We solicit comment on the above described methodology and on whether it would protect consumers while permitting the continued growth and success of the cable industry. Specifically, we seek comment on whether this methodology would provide incentives to cable operators to add programming services, as well as whether the methodology would create disincentives with respect to certain types of programming services.

13. Commenters should provide more than generalized allegations to assist the Commission in determining which method for adjusting benchmark rates will provide sufficient incentives for cable operators to invest in continued growth of cable service. In evaluating the above alternatives for use of the benchmark to adjust capped rates when channels are added or deleted, cable operators and other commenters should provide factual information, including cost data that will provide a firm basis for choosing the best methodology. Commenters should also address the extent to which penetration, subscribership and revenues increase when systems add channels and how such gains should be reflected in rates and our benchmark methodology.

II. Upgrades Initiated Shortly Before Rate Regulation

14. Some cable operators with rates below benchmark levels may have initiated or completed system upgrades shortly before rate regulation. It is possible that the initiation of rate regulation could prevent systems with rates below benchmark levels from raising rates to recover such upgrade costs. While cable operators could seek to recover such costs through a cost-of-service showing, we solicit comment and suggestions on alternatives to a full cost-of-service showing that could permit recovery of such upgrade costs. In particular, we solicit comment on whether the streamlined cost-of-service showing proposed in the Cost-of-Service NPRM should be applied in this context. Alternatively, we solicit comment on whether we should simply permit cable operators that have undertaken upgrades shortly before regulation to raise rates to the benchmark level without any cost showing. This would avoid the burdens of cost-of-service determinations while assuring that rates will not rise to above

benchmark levels. We solicit comment on appropriate criteria for identifying upgrades that would be eligible for either of these alternatives.

III. Operator Discretion to Select Benchmark or Cost-of-Service for Different Regulated Tiers

15. The Rate Order did not explicitly state whether cable operator is permitted to choose the cost-of-service approach for one tier and benchmark approach for the other tier, or whether parallel treatment for both tiers is required in setting initial rates. In the Rate Order we establish a regulatory framework governing rates for cable service that is tier neutral. The current rule governing the setting of initial rates, § 76.922(b), may be read to allow the cable operators to elect one showing on one tier and another showing on another tier. A number of interested parties seek guidance on whether systems have discretion to select different rate-setting approaches for different program service tiers.

16. Several cable operators and cable interests state that requiring a uniform selection is undesirable because: (1) It would prevent cable operators from offering a discounted or "lifeline" basic tier service, which they ostensibly would do if they could seek a cost-of-service showing only on the cable programming services tier; (2) it would encourage a greater number of cost-of-service filings for the basic tier, as cable operators that would have been satisfied with a benchmark analysis for their basic tier rates will be required to make a cost-of-service showing on basic in order to make that showing on another tier; (3) it would require cable operators to duplicate the same case before different regulatory bodies; (4) Congress intended different schemes for the different tiers; and (5) since cost structures differ among tiers, a cable operator should be allowed to choose the appropriate regulatory scheme. On the other hand, NATOA contends that cable operators should be required to make parallel showings for both tiers, when both proceedings occur within a reasonable time of each other. NATOA argues that such a requirement would prevent cable operators from "gaming," *i.e.*, deciding whether it would be advantageous to submit a cost-of-service showing on one tier and a benchmark analysis on another. NATOA believes that allowing different showings would undermine the Commission's intention that the same "reasonable" rate determination be made on both tiers. Another petitioner argues that if the Commission adopts a parallel approach to the setting of initial regulated rates, the Commission should conduct a single cost-of-service proceeding, rather than authorize the franchising authorities to hear such cases. According to this commenter, parallel showings will not promote uniform rates on both tiers, because the per-channel, per-subscriber benchmark rate may differ between the tiers, depending upon the initial date of regulation.

17. Based on the record before us at this time, we tentatively conclude that cable operators should be required to elect either the benchmark or the cost-of-service approach for all regulated tiers. Thus, if a system becomes subject to regulation at the local level and seeks to justify its basic service rates using the benchmark system, the reasonableness of its cable programming services rates will also be judged under the benchmark should a complaint be filed about those rates with the Commission. Similarly, if an operator has more than one tier of cable programming services and receives a complaint regarding the rates for all of those tiers, it must justify the reasonableness of each rate using a consistent approach.

18. We believe at this point that requiring operators to use the same rate-setting approach when supporting the reasonableness of various regulated rates during the initial stages of rate regulation best protects our decision to develop a benchmark system based on tier neutrality and also eliminates any incentive to "game" the regulatory process. As noted in the preceding section, we have implemented a benchmark approach based on tier-neutrality in order to simplify the initial rate-setting process, remove a regulatory incentive to retier or move individual channels from one tier to another, and reduce administrative burdens. If an operator was permitted to elect the benchmark approach for one service tier and cost-of-service for another, however, it would have an incentive to retier its services and place all of its low cost and cost free programming on the tier to which the benchmark will be applied while moving its most expensive programming to the tier for which a cost-of-service showing will be made. In so doing, the operator could be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an averaged rate) that actually far exceeds its costs for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other service tier through a cost-of-service showing, based on its higher costs for that tier. This result would seriously undermine the rate averaging and tier-neutrality concepts built into the benchmark approach by allowing operators to apply the average per channel rates derived from the benchmark formula only to certain tiers. As importantly, cable operators selectively applying the benchmark system in this fashion would be able to charge higher overall rates than would be allowed if either the benchmark or the cost-of-service approach had been applied consistently across all regulated program tiers.

19. Out of an abundance of caution, to avoid such adverse consequences during the initial stages of regulation, we tentatively conclude that operators should be required to use the same rate-setting approach to justify the reasonableness of all regulated service rates. We recognize petitioners' concerns that, if they then elect the cost-of-service approach, they will be required to make cost-of-service showings before two different regulatory entities. This possibility, of course, is a function of the Cable Act itself, which gives local franchising authorities primary authority over basic service rates and the FCC exclusive authority over rates for cable programming services. Nonetheless, we are mindful of the difficulties that could result from this situation. Accordingly, we seek comment below on procedures we might implement to coordinate the local and federal regulatory processes as much as possible. In addition, we invite comment on whether our tentative conclusion to require a consistent rate-setting approach is necessary to avoid gaming of the regulatory process and to protect our initial benchmark approach.

20. We also solicit comment on whether we should establish longer term limitations on cable operators discretion to choose between these different alternatives to rate setting, and what those limitations should be. For example, we could require on a permanent basis that cable operators use the same approach for tiers that are concurrently subject to regulation. However, even if we require that the same rate setting approach be used for all regulated tiers, we also believe that cable operators should be permitted reasonable opportunities to switch from benchmarking to cost-of-service, and *vice versa*. Thus, we could require that operators use the same approach for both tiers within a calendar year but permit them to convert to the other approach after using one approach for that period of time. We solicit comment on whether this alternative is feasible or other alternatives should be adopted. We solicit comment on whether we should not adopt any limitations on

operator discretion to elect different approaches for rate setting for different tiers after the initial phase of rate regulation.

21. We also solicit comment on what procedural requirements we should adopt to provide for coordination between local franchising authorities and the Commission if we adopt limitations on operators' ability to select different approaches for different tiers. For example, if a cable operator elects cost-of-service, would there be a need for coordination between the two jurisdictions? What requirements should we adopt, if any, for coordination of cost proceedings at the local and federal level? If a cost proceeding is initiated in one jurisdiction, and at a later date a different tier becomes subject to regulation, should we provide that the proceedings may proceed independently, or should we take other steps for coordinated or concurrent decision making? Should we require that the determination of one jurisdiction will govern, or be given considerable weight in, setting rates for the tier subject to the oversight of the other jurisdiction? This could reduce administrative burdens on cable operators by, for example, requiring only one cost-of-service showing. It would also promote tier neutrality by assuring that per channel rates based on the same costs or benchmark data will result in the same per channel rates prior to adjustments for external costs. We solicit comment on whether such provisions would be consistent with the local and federal regulation of cable service rates envisioned in the Cable Act of 1992. We note that absent adoption of provisions of this sort, the Commission may rely on established procedures for review by the Commission of local decisions to assure that rate determinations for different tiers are consistent with our rules.

IV. Cost of Upgrades Required by Local Franchising Authorities

22. Finally, we solicit comment on whether we should permit external cost treatment for costs of upgrades required by local franchise authorities. This would be consistent with our general approach of permitting external cost treatment of costs of franchise requirements. On the other hand, upgrade costs could be significant and external treatment for such costs could mean in many cases that a significant component of capped rates will be based on costs. This could undermine the benefits that we believe can be achieved by using benchmarks and price caps as the primary method for regulating cable service rates instead of cost-of-service. We solicit comment on these considerations.

23. We also solicit comment on two alternatives for determining the adjustments to rates based on franchise required upgrade costs if we permit external treatment of them. First, we could require that any such costs be governed by the cost-of-service standards that we adopt in the Cost-of-Service Proceeding. This would have the advantage of providing for uniform treatment of such costs for all cable systems. This would also permit the Commission to assure that such standards and resulting rates reflect a federal balancing of goals for regulation of cable service rates. Second, we could permit local franchise authorities to determine the way in which rates would be adjusted to reflect upgrade costs, including over what period of time such costs would be recovered, the operator's profit on upgrade costs, and other issues involved in cost-of-service standards. This option would establish more local control and responsibility for adjustments to rates on account of upgrades. Either of these alternatives could be applied to only the basic tier or to other regulated tiers as well. We solicit comment on these alternatives.

V. Initial Regulatory Flexibility Act Analysis

24. Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. 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 cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

25. *Reason for action.* The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992. This Notice proposes to establish regulations governing the setting of rates for regulated cable service based on programming costs.

26. *Objectives.* To propose rules to implement section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

27. *Legal Basis.* Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

28. *Description, potential impact and number of small entities affected.* Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 623(i) of the Cable Act of 1992.

29. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Notice do include new reporting and record keeping requirements for cable systems. These reporting requirements include the possibility of filings by cable operators of financial data annually at the Commission.

30. *Federal rules which overlap, duplicate or conflict with this rule.* None.

31. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(i) of the Cable Act of 1992.

VI. Paperwork Reduction Act

32. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. Procedural Provisions

33. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation addressing matters not fully covered in any written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's Rules. 47 CFR 1.1231.

34. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 30, 1993 and reply comments on or before October 7, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street NW., Washigton, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21375 Filed 9–1–93; 8:45 am]

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federal register

Thursday
September 2, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Antifungal, Anorectal, and Nailbiting and Thumbsucking Deterrent Drug Products; Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N–0476]

RIN 0905–AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Certain Labeling Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that certain labeling claims for over-the-counter (OTC) topical antifungal drug products are not generally recognized as safe and effective and are misbranded. FDA is issuing this final rule after considering the report and recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products and public comments on an advance notice of proposed rulemaking and a notice of proposed rulemaking that were based on those recommendations. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 23, 1982 (47 FR 12480), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical antifungal drug products, together with the recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 21, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by July 21, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC topical antifungal drug products was published in the **Federal Register** of December 12, 1989 (54 FR 51136). Interested persons were invited to file by March 12, 1990, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by March 12, 1990. New data could have been submitted until December 12, 1990, and comments on the new data until February 12, 1991.

In evaluating OTC topical antifungal drug products, the Panel discussed ringworm of the scalp and ringworm of the nails (47 FR 12480 at 12487) and concluded:

> *Tinea capitis* (ringworm of the scalp) and *tinea unguium* (ringworm of the nails). Fungal infections of the scalp and nails tend to be chronic. They respond poorly to topical therapy, partly because of the thickness of the nails and the depth of the hair roots. Both sites of infection provide inaccessible locations for fungi, thus drastically decreasing the penetration of topical antifungals. For this reason, OTC topical antifungals must be labeled that they are not effective for the treatment of ringworm of the scalp or nails.

The Panel recommended that the following labeling statement appear in the directions for all OTC topical antifungal drug products: "This product is not effective on the scalp or nails." (See 47 FR 12480 at 12566.)

No data were submitted in response to the Panel's report to support the use of OTC topical antifungal drug products on the scalp or the nails. However, one comment did request that the Panel's recommended statement "this product is not effective on the scalp or nails" be changed to read "this product is not effective in the treatment of fungal infections of the hair and nails." The agency responded that it was retaining the Panel's statement in the directions proposed in the tentative final monograph because the comment did not submit any data to support its suggested change. (See comment 32, 54 FR 51136 at 51155.)

In response to the tentative final monograph, one submission (Ref. 1) was received that contained clinical data to support the safety and effectiveness of a combination of antifungal and keratolytic ingredients for the topical treatment of fungal infections of the nails. The clinical data included the results of a double-blind, randomized, clinical comparison of a product containing a combination of antifungal ingredients (undecylenic acid and chloroxylenol) and keratolytic ingredients (salicylic acid and acetic acid) to its vehicle containing isopropyl alcohol and benzocaine in the topical treatment of fungal infections of the toenails. This study had a major flaw in that it was not designed to demonstrate the contribution of each of the five active ingredients (undecylenic acid, acetic acid, salicylic acid, chloroxylenol, and benzocaine) to the effectiveness of the product's total formulation. The study should have included a comparison of the total formulation minus each of the active ingredients to the total formulation and to the vehicle in order to demonstrate the contribution of each of the active ingredients in the combination.

The clinical data also included the results of an open, uncontrolled study that did not provide any useful information to establish effectiveness. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 2).

The agency is aware that a number of OTC topical antifungal drug products are currently being marketed with claims for use of the product on the scalp or on the nails. No evidence has been submitted to date to establish that any OTC topical antifungal drug products are effective for the treatment of fungal infections on the scalp or on the nails. The Commissioner has determined that OTC topical antifungal active ingredients are not generally recognized as safe and effective for use on the scalp or on the nails. Therefore, the Commissioner is issuing a separate final rule on all topical antifungal active ingredients present in any product bearing claims that it is indicated for the treatment of fungal infections on the scalp or on the nails. FDA has elected to act on OTC topical antifungal drug products bearing these claims before finalizing the rest of the monograph in order to expedite removal from the market of products that lack adequate evidence of effectiveness.

Any OTC topical antifungal drug product bearing any claims or directions for use of the product on the scalp or on the nails may not continue to be initially introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). The agency is amending 21 CFR part 310 by adding to subpart E, new § 310.545(a)(22)(iii) (21 CFR 310.545(a)(22)(iii)) to include any topical antifungal drug products labeled

for use on the scalp or on the nails. Any claims or directions for using an OTC topical antifungal drug product on the scalp or on the nails should be eliminated from OTC drug products by March 2, 1994, regardless of whether further testing is undertaken to justify future use. Thereafter, any OTC drug product containing any topical antifungal active ingredient and labeled or intended for use on the scalp or on the nails will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. Therefore, on or after March 2, 1994, no OTC drug product containing any OTC topical antifungal active ingredient labeled or intended for use on the scalp or on the nails may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency concludes that there is no basis for the continued marketing of any OTC topical antifungal drug products with claims or directions for use on the scalp or on the nails. The agency points out that publication of this final rule does not preclude a manufacturer's testing an antifungal ingredient for these uses. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness for these uses, such data may be submitted in an appropriate citizen petition to amend the final monograph for OTC topical antifungal drug products. (See 21 CFR 10.30.) However, marketing of products containing topical antifungal active ingredients and bearing these claims may not begin or continue while the data are being evaluated by the agency.

References

(1) Comment No. C30, Docket No. 80N–0476, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to G. Mendoza, Kramer Laboratories, Inc., coded LET 24, Docket No. 80N–0476, Dockets Management Branch.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (54 FR 51136 at 51160). As a result of this final rule, some manufacturers will need to relabel their products to delete these claims and/or the directions for use related to these claims. The agency has identified about a dozen OTC topical antifungal drug products marketed with claims for use on the nails. All of these products will need to be relabeled. Based on information provided by a nonprescription drug manufacturer's association, the estimated average cost of a labeling revision is about $2,000.00 per product label. Several of the currently marketed products will also need to be reformulated after the final monograph is issued because they either contain monograph ingredients at nonmonograph concentrations or contain combinations of ingredients that are not included in the final monograph. All products can be reformulated to allowable monograph conditions and remain in the marketplace with appropriate relabeling. The cost of reformulation will vary among manufacturers based on the reformulation choice selected and the costs involved to do product specific stability testing and other standard manufacturing procedures.

Early finalization of the nonmonograph status of the claims listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of product claims for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers of products with such claims will benefit from being able to use alternative claims that have been proposed and will be recognized by the agency as being generally recognized as safe and effective, without incurring additional expense of clinical testing to support these claims. (See proposed § 333.250(b), 54 FR 51136 at 51161.) Based on the information above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(22)(iii), by revising the introductory text of paragraph (d), and by adding new paragraph (d)(12) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(22) * * *

(iii) Any ingredient(s) labeled with claims or directions for use on the scalp or on the nails.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(12) of this section.

* * * * *

(12) March 2, 1994, for products subject to paragraph (a)(22)(iii) of this section.

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21369 Filed 9–1–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 310

[Docket No. 80N–0050]

RIN 0905–AA06

Anorectal Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing afinal rule establishing that any over-the-counter (OTC) drug product containing live yeast cell derivative (LYCD) for anorectal use is not generally recognized as safe and effective and is misbranded. This final rule evaluates data on LYCD that were still under review when an earlier final rule on OTC anorectal drug products was issued. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: September 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (the Panel), which was the advisory review panel responsible for evaluating the data on the active ingredients in this class of drugs. The agency's tentative final monograph on OTC anorectal drug products was published in the **Federal Register** of August 15, 1988 (53 FR 30756). LYCD was considered safe for use as an OTC wound-healing agent for limited use (1 week or less), but was classified as Category III (available data are insufficient to classify as effective for use as an OTC woundhealing agent in the anorectal area, and further testing is required) (53 FR 30765).

One comment, submitted at the end of the period for the submission of new data, contained the results of two new clinical studies in support of the effectiveness of LYCD in the relief of hemorrhoidal symptoms (Ref. 1). These studies remained under review at the time of publication of the agency's final rule on OTC anorectal drug products in the **Federal Register** of August 3, 1990 (55 FR 31776); that rule did not address the final status of LYCD. The agency stated that in order to complete the publication of the final monograph for OTC anorectal drug products without undue delay, the agency was not addressing the data submitted on LYCD in that document, and that the data would be addressed as soon as the agency's review was completed. The agency's evaluation of those data now completes the anorectal drug products rulemaking with respect to LYCD. The only other pending issues relating to hydrocortisone, as discussed in the final rule (55 FR 31776), will be addressed in a future issue of the **Federal Register** to complete the rulemaking on OTC anorectal drug products.

In its final conclusions on OTC anorectal drug products (55 FR 31776), the agency listed a number of anorectal ingredients that it considered to be nonmonograph ingredients. The agency stated that on or after August 5, 1991 (12 months after the final rule was published), no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application.

When the final rule was issued in August 1990, none of the nonmonograph ingredients were listed in a regulation. Since then, the agency has established 21 CFR 310.545, which contains a list of certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. The agency is adding § 310.545(a)(26) to include the nonmonograph anorectal active ingredients discussed in the final rule of August 3, 1990, as well as LYCD. The date of nonmonograph status for all of the ingredients, except for LYCD, listed in § 310.545(a)(26) was August 5, 1991. The date of nonmonograph status of LYCD is September 2, 1994. This timeframe for LYCD is consistent with that provided for other nonmonograph ingredients in the August 3, 1990, final rule. The agency's detailed comments on the data are on file in the Dockets Management Branch (Ref. 1).

Reference

(1) Comment No. C19, Docket No. 80N–0050, Dockets Management Branch (HFA–305),Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

II. The Agency's Final Conclusions on Live Yeast Cell Derivative for Anorectal Use

One comment submitted the results of two studies (WBI–1987 and WM–444B) to support the effectiveness of LYCD for relief of hemmorhoidal symptoms of pain, itching, burning, or irritation, and for shrinking swelling of hemorrhoidal tissue caused by inflammation (Ref. 1). The comment also referred to other data that it had submitted to the rulemaking on OTC skin protectant drug products in support of LYCD's effectiveness as a wound healing agent (Ref. 2). The comment stated its belief that the skin protectant data also support the use of LYCD as a wound healing agent in the anorectal area. The comment cited the Panel's discussion of the nature of data required to support the effects of wound-healing agents on anorectal wounds in the advance notice of proposed rulemaking (45 FR 35576 at 35658), where it stated "* * * an agent that causes a significant increase in the healing of wounds at other sites, and also relieves anorectal clinical symptoms over a similar time period can be considered an anorectal wound-healing agent." The comment concluded that the agency would accept evidence of wound-healing efficacy from tissues other than in the anorectal area.

The agency has evaluated the two studies and determined that they are incapable of demonstrating the effectiveness of LYCD for relief of hemorrhoidal symptoms of pain, itching, burning, or irritation. The studies also do not contain data showing that LYCD shrinks swelling of hemorrhoidal tissue caused by inflammation. The conduct of studies WBI–1987 and WM–444B was independently inspected by agency field investigators who found evidence that the data submitted were unreliable.

A. Study WBI–1987

This study was a double-blind, randomized, parallel group comparison of LYCD versus ointment vehicle for the relief of hemorrhoidal discomfort. The purpose was to show the effectiveness of LYCD in an ointment as a wound healing agent. On case report forms, subjects were to record (by vertical marks on 100 millimeter (mm) visual analog scales) their assessment of two qualities of hemorrhoidal pain, i.e., irritation and burning, immediately before treatment, and 5, 15, 30, 45, and 60 minutes after treatment. The two qualities of hemorrhoidal pain were analyzed as separate scores. Hemorrhoidal pain relief was assessed at each post-treatment evaluation by the

participant circling one of six adjectives ranging from "complete relief" to "no relief." On the 100 mm analog scale, improvement from baseline for the active preparation and for the control, respectively, were 65.0 and 44.1 for irritation, and 72.7 versus 46.0 for burning, according to the sponsor's analysis. Comparison of the two treatments for both parameters was analyzed by the two-sample t-test, which showed statistically significant differences for both parameters ($p < 0.001$). Mean total pain relief on a six-category scale was reported as 3.8 for the active preparation and 2.8 for the control ($p < 0.001$).

A global assessment of efficacy was also to be provided at the conclusion of the l-hour study. The subject graded the overall effectiveness of the medication by circling the appropriate number on a scale where 1 represented "poor" and 10 represented "excellent." All 20 subjects treated with the active preparation gave a global evaluation score of 8 or better, and 13 subjects graded it as excellent (10). Mean global assessment rated was 9.6 for the active preparation and 7.3 for the control ($p < 0.001$). None of the control subjects graded the treatment as excellent.

While these results seem to infer effectiveness, it does not appear that the case report forms, on which all critical data were to be recorded by the subject, were in fact contemporaneously filled out by the subjects. The circles and vertical lines used to record scores were all of two easily distinguishable types; they did not show the diversity that would be expected if each subject filled out his or her own clinical report form. For one subject who was included in the study twice, there were clear differences in the manner and style of the subject's markings on the visual analog scales on two different occasions. The differences would be unlikely if the subject had actually filled out the form. Thus, it appears that study personnel filled out the forms, which is a clear violation of the protocol and which raises major questions as to the blinding and integrity of the study. If the forms were not filled out by subjects at the time of that rating, as the protocol required, there can be no assurance that the forms represent actual reports by the subjects at the appropriate measurement time and not, for example, ratings filled out by study personnel aware of treatment assignments.

Questions concerning who filled out the forms and when they were filled out were asked of the investigator. He responded to the agency by letter dated November 19, 1991 (Ref. 3), but the response did not address the issue of who filled out the forms. The investigator dealt with other problems and emphasized future improvements in his practices. Thus, although the reported results of the study might support effectiveness, the significant discrepancy between the reported and the actual method of data collection does not allow the agency to conclude that bias on the part of the investigator or analyst has been shown to be minimized.

B. Study WM–444B

This study was a double-blind, parallel group clinical trial using a methodology similar to Study WB–1987, but with the subjective assessment testing period extended to include 75–, 90–, 105–, and 120–minute assessment times. The purpose of this study was also to demonstrate the effectiveness of LYCD ointment in relief of hemorrhoidal pain. Of 100 subjects eligible to enter the study, 50 were allocated to the active preparation and 50 to the vehicle. The effect of the active preparation was significantly greater than that of the vehicle for all variables at all evaluation points.

Unfortunately, this study cannot be considered an adequate and well-controlled study because the method of blinding provides no assurance that the study was, in fact, blinded successfully. The tear-off portions of the label (under which the tube's contents were revealed) were closed by rubber cement. There was no way to tell whether the tear-off section had been opened because the rubber cement closure could be replaced readily. Agency reviewers found that they could easily open the labels to reveal the identity of the medication, re-close them, and then attach them on the case report form of the respective subjects, without altering their appearance. Thus, there is no assurance that the study was blinded, as planned. Ordinarily, in studies that are adequately double-blinded, once labels are opened they cannot be closed again without appearing altered. In the absence of secure blinding, there is no evidence that the subjects were not biased by suggestions from the nurses, the coordinator, or the principal investigator.

Study WM–444B also had other deficiencies and significant departures from commonly accepted investigational practices: (1) There was no record of lot numbers on the tubes for the product tested; thus there was no assurance that the drug product used in the clinical trial was the same formulation as the drug product proposed for marketing, and (2) the allocation of samples for each test site was not addressed.

Standards for effectiveness of an OTC drug that is generally recognized as safe and effective are set forth in 21 CFR 330.10(a)(4)(ii), which states that proof of effectiveness of such an OTC drug shall consist of controlled clinical investigations as defined in § 314.126(b)(21 CFR 314.126(b)), unless this requirement is waived as not reasonably applicable or essential and another method is adequate. Based on inadequate measures taken by the investigative team to minimize bias on the parts of the subjects and the observers, the agency finds that the studies were not conducted in conformance with 21 CFR 314.126(b)(5).

In conclusion, the agency does not consider either study capable of demonstrating the effectiveness of LYCD for any anorectal uses. Therefore, the studies are inadequate to support the use of LYCD to relieve symptoms of hemorrhoidal pain, itching, burning, or irritation, or to shrink hemorrhoids.The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 4).

References

(1) Comments No. C19 and SUP5, Docket No. 80N–0050, Dockets Management Branch.

(2) Comments No. C34, AMD, C57, SUP, and LET11 through LET14, Docket No. 78N–0021, Dockets Management Branch.

(3) Second attachment to letter from W. E. Gilbertson, FDA, to J. R. Jacobs, Whitehall Laboratories, coded LET25, Docket No. 80N-0050, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to J. R. Jacobs, Whitehall Laboratories, coded LET25, Docket No. 80N–0050, Dockets Management Branch.

C. Data Submitted to the Skin Protectant Rulemaking

The comment's data on LYCD as a skin protectant wound healing agent were not used in arriving at the agency's conclusion on LYCD's effectiveness as an anorectal wound healing agent. The Panel stated that studies to test the effects of agents on wound healing must be designed with the use site in mind, i.e., where there is compression (due to sitting), stretching of surface and subcutaneous tissue on a sporadic basis (due to walking, bowel movement), increased moisture, chafing (due to clothing and opposed body surfaces), and gross contamination by aerobic and/or anaerobic bacteria and yeast (45 FR 35576 at 35658). The Panel compared testing under those conditions with testing on many body wounds that can be maintained at a relative degree of cleanliness, immobilized, and covered consistently or exposed to air. The Panel further pointed out that although the wound-healing process may be similar

in the anorectal and other areas, the natural impediments are not and thus any experimental design germaine to the anorectal area must consider these impediments. The agency agrees with the Panel's conclusions and further notes that the data in support of LYCD as a skin protectant wound-healing agent consisted of studies on subjects with burns and with surgically induced abrasions (Ref. 1). Testing in these studies did not take into account the differences in treatment area as described by the Panel. Accordingly, these studies are not acceptable to support the use of LYCD as a wound-healing agent in the anorectal area.

Reference

(1) Comments No. C34, AMD, C57, SUP, and LET11 through LET14, Docket No. 78N–0021, Dockets Management Branch.

The agency has determined that LYCD for any OTC anorectal use is not generally recognized as safe and effective. The agency is amending § 310.545(a) and (d) to establish that LYCD and certain other active ingredients are not generally recognized as safe and effective and are misbranded for use in OTC anorectal drug products. Therefore, LYCD as an ingredient for OTC anorectal use is considered a nonmonograph ingredient and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application or abbreviated application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to amend the monograph (21 CFR part 346) and containing new data to support LYCD's use as an anorectal active ingredient may be submitted under 21 CFR 10.30 in lieu of an application. Any drug product containing LYCD as an anorectal active ingredient for OTC use initially introduced or initially delivered for introduction into interstate commerce or repackaged or relabeled after the effective date of this final rule is not in compliance with the regulation and is subject to regulatory action.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC anorectal drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC anorectal drug products is not expected to pose such an impact on small businesses. This final rule only affects the status of LYCD for OTC anorectal use. The agency is aware of only a few LYCD-containing OTC anorectal drug products that are currently marketed. These products also contain shark liver oil, petrolatum, or cocoa butter, acceptable anorectal protectants (Refs. 1, 2, and 3). Thus, the products can be reformulated to delete the LYCD and be relabeled to delete any claims specifically related to LYCD. Anorectal protectant ingredients and claims in accord with §§ 346.14 and 346.50 can be used. For all other active nonmonograph ingredients listed in this final rule, the effective date of August 5, 1991, has already occurred. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

(1) Physicians' Desk Reference for Nonprescription Drugs, 13th ed., Medical Economics Co., Inc., Oradell, NJ, 1992, pp. 752–753.

(2) Physicians' Desk Reference for Nonprescription Drugs, 13th ed., Medical Economics Co., Inc., Oradell, NJ, 1992, p. 777.

(3) Drug Facts and Comparisons, 46th ed., Facts and Comparisons, St. Louis, 1992, p. 2163.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(26), by revising the introductory text of paragraph (d), and by adding new paragraphs (d)(13) and (d)(14) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(26) *Anorectal drug products*—(i) *Anticholinergic drug products.*

Atropine
Belladonna extract

(ii) *Antiseptic drug products.*

Boric acid
Boroglycerin
Hydrastis
Phenol
Resorcinol
Sodium salicylic acid phenolate

(iii) *Astringent drug products.*

Tannic acid

(iv) *Counterirritant drug products.*

Camphor (greater than 3 to 11 percent)
Hydrastis
Menthol (1.25 to 16 percent)
Turpentine oil (rectified) (6 to 50 percent)

(v) *Keratolytic drug products.*

Precipitated sulfur
Sublimed sulfur

(vi) *Local anesthetic drug products.*

Diperodon
Phenacaine hydrochloride

(vii) *Other drug products.*

Collinsonia extract
Escherichia coli vaccines
Lappa extract
Leptandra extract
Live yeast cell derivative
Mullein

(viii) *Protectant drug products.*

Bismuth oxide
Bismuth subcarbonate
Bismuth subgallate
Bismuth subnitrate
Lanolin alcohols

(ix) *Vasoconstrictor drug products.*

Epinephrine undecylenate

(x) *Wound healing drug products.*

Cholecalciferol

Cod liver oil
Live yeast cell derivative
Peruvian balsam
Shark liver oil
Vitamin A

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(14) of this section.

* * * * *

(13) August 5, 1991, for products subject to paragraphs (a)(26) of this section, except for those that contain live yeast cell derivative.

(14) September 2, 1994, for products subject to paragraph (a)(26)(vii) and (a)(26)(x) of this section that contain live yeast cell derivative.

Dated: August 27, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21370 Filed 9–1–93; 8:45 am]

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21 CFR Part 310

[Docket No. 80N–0146]

RIN 0905–AA06

Nailbiting and Thumbsucking Deterrent Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any nailbiting and thumbsucking deterrent drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC nailbiting and thumbsucking deterrent drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1980 (45 FR 69122), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), a proposed rule to establish a monograph for OTC nailbiting and thumbsucking deterrent drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 15, 1981. Reply comments in response to comments filed in the initial comment period could be submitted by February 16, 1981.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC nailbiting and thumbsucking deterrent drug products was published in the **Federal Register** of September 3, 1982 (47 FR 39096). Interested persons were invited to file by November 2, 1982, written comments, objections, or requests for a oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 2, 1983. New data could have been submitted until September 3, 1983, and comments on the new data until November 3, 1983.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991 and included, in § 310.545(a)(13), denatonium benzoate, an active ingredient under consideration in the rulemaking for OTC nailbiting and thumbsucking deterrent drug products. This ingredient was determined to be nonmonograph because no additional data had been submitted establishing that it was generally recognized as safe and effective as a nailbiting and thumbsucking deterrent. Final agency action on all other OTC nailbiting and thumbsucking deterrent drug products occurs with the publication of this final rule.

In the proposed rule, the agency did not propose any OTC nailbiting and thumbsucking deterrent active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the event that data were submitted that resulted in the upgrading of any ingredient to monograph status in the final rule. In this final rule, however, no active ingredient has been determined to be generally recognized as safe and effective for use in OTC nailbiting and thumbsucking deterrent drug products. Therefore, proposed subpart C of 21 CFR part 358 for OTC nailbiting and thumbsucking deterrent drug products is not being issued as a final regulation.

This final rule declares OTC drug products containing OTC nailbiting and thumbsucking deterrent active ingredients to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing these drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing nailbiting and thumbsucking deterrent ingredients by adding to subpart E new § 310.536 (21 CFR 310.536). The inclusion of OTC nailbiting and thumbsucking deterrent drug products in part 310 follows FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC nailbiting and thumbsucking deterrent drug product, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and

effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed rule for OTC nailbiting and thumbsucking deterrent drug products (47 FR 39096 at 39097), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the Federal Register for relabeling and reformulation of nailbiting and thumbsucking deterrent drug products to be in compliance with the monograph. Although data and information were submitted on sucrose octaacetate in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, nailbiting and thumbsucking deterrent drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the proposed rule (45 FR 69122), the agency advised that conditions excluded from the monograph (Category II) would be effective 6 months after the date of publication of a final monograph in the Federal Register. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-months effective date for the nonmonograph conditions for these drug products. Therefore, on or after March 2, 1994, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC nailbiting and thumbsucking deterrent drug products, one State Department of Health, one drug manufacturer, and one drug manufacturer's association submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179), or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the Federal Register of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for OTC antacid drug products, published in the Federal Register of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by informal rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. One comment contended that nailbiting and thumbsucking deterrents are not drugs within the meaning of section 201(g) of the act (21 U.S.C. 321(g)) and thus are not the proper subject of an OTC drug monograph. The comment asserted that nailbiting and thumbsucking are not "diseases" within the meaning of the act, but are instead regarded as "habits." The comment stated that the Panel found fingernail biting to be an "extremely common habit" and thumbsucking to be "a natural act of the newborn" or "an empty or simple habit as a result of learned behavior." The comment also stated that nailbiting and thumbsucking are not listed or classified in any recognized texts as diseases, but are instead regarded as habits, and quoted *Webster's Third New International Dictionary* to show that nailbiting and thumbsucking are habits and not diseases. Referring to the definition of a "drug" in section 201(g)(1)(B) of the act, the comment contended that nailbiting and thumbsucking deterrent products do not cure, mitigate, treat, or prevent a disease, and claimed that such a product "has no pharmacological effect—it just tastes bad" and thus "discourages certain bad habits." The comment argued that because these products stop a habit and a habit does not qualify as a disease, these products cannot be regulated as drugs within the meaning of the act. Several court cases were cited to support this position.

The agency has considered the above arguments and disagrees with the contention that nailbiting and thumbsucking deterrents are not drugs. As noted above, the act defines a drug, in part, in section 201(g)(1) as "* * * (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals * * *."

While nailbiting and thumbsucking may be habits, they are also conditions which, if left untreated, can result in disease. The Panel (45 FR 69122 at 69123) noted that nailbiting results in fine needlelike projections at the edge of the nail which cause splits and mild paronychia (inflammation involving folds of tissue surrounding the nail). The Panel also stated that when nails are bitten excessively, open wounds result, making this area highly susceptible to infections. Nailbiting deterrents are intended to stop the "habit" and thereby prevent the disease conditions from occurring.

In its consideration of thumbsucking, the Panel referred to numerous reports showing an association of thumbsucking with malocclusion (faulty closure of upper and lower teeth) (45 FR 69122 at 69124). The Panel stated that persistent thumbsucking may lead to the incomplete eruption of the incisors as well as affect the development of muscles of the lips, thus affecting swallowing. The Panel added that arch and palate formation may be adversely affected, causing deviation of the nasal septum and mouthbreathing, and that a crossbite or other occlusal abnormalities may also develop. The Panel also stated that thumbsucking may affect respiration, mastication, speech, and swallowing (45 FR 69124). Further, the Panel stated that if thumbsucking continues past age 4 it should be treated, because continued thumbsucking may lead to clinically significant medical problems.

Promotional packaging material submitted to the Panel by a manufacturer (Ref. 1) claims that nailbiting results in harm to the digestive tract if the nails are swallowed, and that nailbiting provides a convenient entry of germs into the body, thus causing the risk of infection. The same promotional material warns against the possibility of malformation

of the bite of children whose thumbsucking habit is not stopped. Another manufacturer (Ref. 2), in its labeling submitted to the Panel, included the statement "* * * Allow the medication to dry thoroughly * * *." These labeling statements indicate that some manufacturers intend for the product to prevent disease.

Nailbiting and thumbsucking may lead to abnormal, unhealthy conditions that, if not alleviated, may cause disease. Therefore, the agency considers products used to alleviate these conditions as products intended to prevent disease. Accordingly, such products are drugs under section 201(g)(1)(B) of the act and are therefore the proper subject of an OTC drug monograph.

References

(1) OTC Vol. 160054.
(2) OTC Vol. 160010.

3. In response to an agency feedback letter to a manufacturer of nailbiting deterrent products (Ref. 1), the manufacturer asserted that nailbiting prevention products are not drugs per se and could be labeled so that they would be cosmetics under the act (Ref. 2). The manufacturer submitted examples of labeling for its products in support of this position. This comment also cited portions of a statement made by the agency in the tentative final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products (51 FR 27346 at 27347 to 27348, July 30, 1986). The comment cited the following statement regarding dandruff shampoos in further support of its position:

> * * * the mere use of the word "dandruff" does not automatically render a shampoo or other hair care product subject to regulation as a drug. * * * When the use of the term "dandruff" deals only with appearance and not with the treatment or prevention of the underlying disease condition * * * the product is cosmetic in nature.

In order to establish the proper context for answering this comment, it is necessary to quote the entire relevant section, from which the portion was extracted in the comment. It reads as follows:

> The agency agrees with the original comment that the mere use of the word "dandruff" does not automatically render a shampoo or other hair care product subject to regulation as a drug. The Federal Food, Drug, and Cosmetic Act defines a "drug" as an article "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease * * * [or] intended to affect the structure or any function of the body. * * * (See 21 U.S.C. 321(g)(1)(B) and (C).) A "cosmetic," on the other hand, is defined as an article intended to be "applied to the human body * * * for cleansing, beautifying, promoting attractiveness, or altering the appearance." (See 21 U.S.C. 321(i)(1).) *The product's intended use, therefore, determines whether it is a "drug," a "cosmetic," or both. This intended use may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor.* [emphasis added] See, e.g., *National Nutritional Foods Association* v. *Mathews*, 557 F.2d 325, 334 (2d Cir. 1977). When the use of the term "dandruff" deals only with appearance and not with the treatment or prevention of the underlying disease condition, as in the context that a product removes loose flakes of dandruff or cleans the hair of dandruff flakes or scales, the product is cosmetic in nature. This position is clearly and correctly stated by the agency in the letters cited by the original comment (Refs. 1 and 2).
>
> *Any use of the term dandruff that would make or imply a claim for the prevention, control, or treatment of dandruff beyond the simple mechanical removal of flakes and scales would, of course, render the product a drug. Examples of claims that would cause a hair care product to become a drug include terms such as* "antidandruff," "dandruff control shampoo," "dandruff treatment," or "*prevents dandruff.*" The agency further concludes that the differences between drug and cosmetic claims are sufficiently clear that the statement requested by the first comment is unnecessary. [emphasis added]

The labeling on nailbiting considered by the Panel, as discussed above, was clearly for the prevention of disease. The Panel believed, as does the agency, based in part on the products' marketing history, that the predominant intended use of the products was medical in nature. This pattern of use establishes the intent that brings the product within the drug definition of the act. A relevant source for determining a product's status can be the consumer's intent in using the product. The FDA is not bound by the manufacturer's subjective claims, but can find actual therapeutic intent on the basis of objective evidence. *Action on Smoking and Health* v. *Harris*, 655 F.2d 236 (DC Cir. 1980); *National Nutritional Foods Association*, supra 325, 334. While nailbiting prevention products may also be cosmetics in that they are intended to affect appearance, they nonetheless are also, and primarily, drugs because they are intended to prevent disease. As drugs, the products must be shown to be generally recognized as safe and effective or be the subject of an approved new drug application to be lawfully marketed.

With respect to the comment, this manufacturer's subjective intent too, at least up to the time that it was advised that the studies under review did not establish safety and effectiveness, as discussed below, apparently was that the products were drugs. In fact, the manufacturer submitted studies to the agency in support of OTC drug monograph status (Ref. 3). Even the labeling submitted with the comment reflects that position, especially the "Active Ingredients" section of the labeling. It is, of course, elementary that drugs have active ingredients; cosmetics have ingredients but not active ingredients.

The agency does not agree with the shampoo analogy cited by the comment with reference to the quoted extract. The claim "Stops nail biting," which is in the labeling submitted, is analogous to the shampoo claim "prevents dandruff," not "washes away flakes." And, as reference to the full passage from the quoted tentative final monograph shows, the agency concluded there that the claim "prevents dandruff" was a drug claim for a shampoo. In the current situation, the agency concludes that products intended to prevent nailbiting are drugs. Such products, depending on their labeling and other factors, may also be regulated, but not solely, as cosmetics.

References

(1) Letter from W. E. Gilbertson, FDA, to P. S. Reichertz, coded LET4, Docket No. 80N–0146, Dockets Management Branch.
(2) Letter from N. L. Buc to W. E. Gilbertson, FDA, coded LET5, Docket No. 80N–0146, Dockets Management Branch.
(3) Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

B. Comments on Sucrose Octaacetate

4. One comment submitted data from three clinical studies to show the effectiveness of sucrose octaacetate as a nailbiting and thumbsucking deterrent (Refs. 1, 2, and 3). The comment contended that the intensely bitter taste of this ingredient is a matter of aversion therapy.

Another comment contended that "It goes without saying that any ingredient which has an intensely bitter taste which is applied to the nails (or thumbs) will deter one from placing the nail (or thumb) in his/her mouth." The comment maintained that 32 and 15 years of marketing experience for two of its products, with consumer acceptance, is a testament to their effectiveness. Based on the clinical studies and years of marketing experience, the comment concluded that there is sufficient evidence of effectiveness to place this ingredient in Category I under 21 CFR 330.10(a)(4)(ii), which states:

Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. Proof of effectiveness shall consist of controlled clinical investigations as defined in § 314.126(b) of this chapter, unless this requirement is waived on the basis of a showing that it is not reasonably applicable to the drug or essential to the validity of the investigation and that an alternative method of investigation is adequate to substantiate effectiveness. Investigations may be corroborated by partially controlled or uncontrolled studies, documented clinical studies by qualified experts, and reports of significant human experience during marketing. * * * General recognition of effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data.

The agency has reviewed the three clinical studies (Refs. 1, 2, and 3) and determined that the data are not adequate to support general recognition of sucrose octaacetate as safe and effective as an OTC nailbiting and thumbsucking deterrent. The data included the results of three parallel group, randomized, 6-week, placebo-controlled studies from three different research centers: (1) Marquette University School of Dentistry, (2) Eastman Dental Center, and (3) Tufts University School of Dental Medicine. (In this discussion, these studies will be referred to as the "Marquette," "Eastman," and "Tufts" studies, respectively.) These studies were designed solely to assess the effect of sucrose octaacetate during use. No attempt was made to determine the effectiveness of "aversion therapy" in changing the subjects' behavior after the drug was no longer being given.

Each study included approximately 50 subjects with a history of chronic nailbiting. Subjects were randomly assigned to treatment and placebo-control groups. The treatment groups received a solution containing sucrose octaacetate, and the control group received a solution identical in all respects but excluding sucrose octaacetate. Subjects were instructed to apply the solution to the nails at least 5 times daily and after each handwashing by brushing it over the fingernails and the surrounding skin. Subjects made entries into diaries that were collected at each weekly visit. Nails were photographed prior to the study period and at weekly intervals, using 35 millimeter (mm) film. A 1 mm standard was placed on the nail prior to photographing. The photographs were projected to a magnification of 10 times, where 1 mm was equal to 1 centimeter. Measurements were made from the cuticle to the edge of the free nail and from the cuticle to the edge of the nail bed. The length of the free nail was calculated as the difference between these two measurements. Results were evaluated by investigator examination and comparison of photographs of the nails taken prior to and during the 6-week study period. Results were expressed as mean changes in the length of the full nail (from the cuticle to the edge of the free nail) and the free nail (nailplate extending beyond the nail bed) for all five digits.

The Marquette study included 52 subjects (25 received sucrose octaacetate and 27 received placebo). Overall, 18 of 25 subjects in the treated group (72 percent) responded positively (defined as steady growth of all finger and thumb nails). In the placebo group, only 6 of 27 subjects (22 percent) responded positively. According to the sponsor, the length of free nail showed a statistically significant ($p \leq 0.001$) treatment effect at the end of 6 weeks. Mean differences between sucrose octaacetate and placebo for men and women were about 0.7 mm. The growth in full nail was also numerically greater for the treated group than for the control group, but the difference between the groups was not significant.

The Eastman study included 51 subjects. Thirty-five of the subjects were 16 years of age or younger, with 19 receiving the test solution and 16 receiving the placebo. Sixteen subjects ranged from 17 to 50 years of age, with 7 subjects receiving the test solution and 9 receiving the placebo. Weekly evaluations of nail growth were performed on the two separate age groups. No reason was given for analyzing the results as two separate groups. This analysis was not called for in the protocol. However, data on both older and younger subjects were presented. The investigator stated that statistical evaluation of the data was only done on the group aged 16 years and younger because of the wide difference in age of the older group. In contrast to the other two studies, only the data on total nail growth of all nails over the entire test period for each subject were provided. Free nail growth was not calculated. Calculation of the free nail growth (done in the other studies) requires careful photographing to insure sharpness, color reproducibility, and consistency. Many of the subjects in this study used nail polish, sometimes making measurement of the free nail impossible. Analysis of the data from the younger group showed no significant differences in total nail growth between the test and control groups. Thus, the study does not support the effectiveness of the product as a nailbiting deterrent.

The Tufts study enrolled 50 subjects, 29 in the test group and 21 in the placebo group. This study included a minimum of 5 weeks of observation as opposed to the 6 weeks called for in the protocol. By the Mann-Whitney U test, statistically significant differences were seen at 5 weeks in both the free nail ($p < 0.0001$) and the full nail ($p < 0.0003$) analyses. The control group showed a relatively large response to the placebo during the first 3 weeks, after which growth leveled off. The nails of the test group continued to improve so that the test group and the control group differed significantly after 3 weeks for free nails and after 4 weeks for full nails. P values were supplied for the treatment by period interaction. They were statistically significant.

The Marquette and Tufts studies appear to suggest some effect of sucrose octaacetate in decreasing nailbiting during use. Apart from the questionable relevance of the finding to the use of such products (discussed below), the agency cannot conclude that the two studies are well-controlled clinical trials. Important details are lacking about the conduct of the studies: (1) The method of randomization was not provided. Although random treatment allocation appears to have been used, in the Tufts study missing participant numbers, use of the same number for two people, and the imbalance between the groups (29 vs 21) raise questions about failure of randomization, omission of or addition of participants, errors, or dropouts. (2) The reports do not indicate whether or not the photographs of the fingernails were interpreted with the observer unaware of treatment assignment, which is critical to determining whether potential observer biases were minimized. (3) It is not clear what was the primary end point, total or free nail growth. How the two measures differ and their independence was not clearly discussed. (4) Subjects' responses, other than those relating to nail growth, were not evaluated.

A number of subjects, in their diary entries, alluded to perceived adverse changes in the appearance or consistency of the nail, a disappearance or decrease in intensity of the bad taste with time, a switch from nailbiting to tearing at soft tissue, and/or an irritation of open wounds. These and any other adverse effects were ignored in the reports and summary, which did not acknowledge that unwanted effects may or may not have been present. The studies thus fail to adequately assess the

safety of sucrose octaacetate. Although the two studies appear to confirm one another, the investigators expressed the results in different ways: change, total length differences. Thus, it is difficult to directly compare results.

The 6-week duration of the studies and the failure to follow subjects off treatment allows assignment only of a short-term effect of sucrose octaacetate as a nailbiting deterrent. As stated in the comment, the objective of using sucrose octaacetate (bitter taste) is to break the nailbiting habit through aversion therapy, an action that can only be evidenced if subjects stop using the sucrose octaacetate and a persistent effect on the nailbiting habit is clearly shown. The product is not intended to be used indefinitely. The design of further studies should reflect the therapeutic goal; i.e., the studies need to show effects on nailbiting persisting after use of the drug is completed.

While some of the submitted studies might, if described more fully, suggest that sucrose octaacetate has a small effect on nailbiting while being used, there is no evidence that the effect persisted after the treatment was stopped or that the drug has an effect on breaking the nailbiting habit. Accordingly, the agency is not including sucrose octaacetate in this final rule as a monograph ingredient.

References

(1) Azhdari, S. S., "Nail Biter Sucrose Octa Acetate Efficacy Study," unpublished study in Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

(2) Johnson, E., S. Schwartz, and R. E. Clark, "Placebo-controlled, Double Blind, Parallel Group Evaluation of the Efficacy of Sucrose Octa Acetate (SOA) in Suppression of Nail Biting," unpublished study in Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

(3) Sveen, O. B., "Sucrose Octa Acetate Efficacy Study," unpublished study in Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

5. One comment contended that the results of studies designed to assess the effectiveness of sucrose octaacetate as a nailbiting deterrent (specifically, the three studies discussed in comment 3) could also be related to thumbsucking because the drug works by a conditioning action.

The agency does not agree with the comment. In discussing testing guidelines, the Panel specifically stated that a double-blinded study, using the vehicle as a control, in a patient population of nailbiters as well as thumbsuckers was needed (45 FR 69122 at 69127). The three studies contained data only on nailbiting. The agency agrees that the results of studies done on a nailbiting population, even if persuasive for effectiveness in that condition, would not constitute evidence of effectiveness as a thumbsucking deterrent. Moreover, the supposed similar effects are based on the idea that a "conditioning" action would be effective in both conditions; in fact, the nailbiting studies cannot provide support for such an effect because sucrose octaacetate was used throughout the study. The agency is not aware of any basis for assuming that the drive or motivation for nailbiting would be equal in magnitude to that for thumbsucking and that, consequently, the same adverse taste would equally deter both habits. The thumb is in the mouth longer during thumbsucking than is the finger during nailbiting. Phenomena such as tolerance or tachyphylaxis could therefore be important to different extents in nailbiters and thumbsuckers. Comments recorded in the diaries of a number of the subjects in the studies indicated that the bitter taste of sucrose octaacetate either vanished completely or was materially changed in intensity with time, suggesting that tolerance might occur. Thumbsuckers who are strongly driven may tolerate the few minutes of adverse effect in order to derive the longer-term (presumed) benefit of thumbsucking.

The submitted data did not include any direct assessment of sucrose octaacetate as a deterrent for thumbsucking, nor any evidence of a "conditioning" effect in any setting. The agency has no basis for assuming that the bitter taste of sucrose octaacetate would have a favorable short- or long-term effect on thumbsucking.

C. Comments on Labeling

6. Several comments discussed suggested labeling for OTC nailbiting and thumbsucking deterrent drug products. Because no active ingredients have been classified as a monograph condition in this final rule for OTC nailbiting and thumbsucking deterrent drug products, the agency is not addressing the comments' requests. Data in the form of a new drug application or a petition to establish a monograph, pursuant to 21 CFR 10.30, may be submitted to support an ingredient's safety and effectiveness as a nailbiting and/or thumbsucking deterrent. Should such data demonstrate an ingredient's safety and effectiveness for this use, the agency will then consider labeling recommendations such as those made by the comments.

II. The Agency's Final Conclusions on OTC Nailbiting and Thumbsucking Deterrent Drug Products

At this time, there is a lack of data from adequate and well-controlled, double-blind studies to establish that denatonium benzoate, sucrose octaacetate, or any other ingredients are safe and effective for use as a nailbiting or thumbsucking deterrent. The agency has determined that no active ingredient has been found to be generally recognized as safe and effective for OTC use as a nailbiting or thumbsucking deterrent.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310, establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(13) the ingredient denatonium benzoate that had been previously considered under this rulemaking for use as a nailbiting or thumbsucking deterrent. The final rule in this document establishes that any OTC nailbiting or thumbsucking deterrent drug product is not generally recognized as safe and effective and expands the nonmonograph ingredients to include all other nailbiting and thumbsucking deterrent active ingredients, such as sucrose octaacetate. Therefore, any ingredient that is labeled, represented, or promoted for OTC use as a nailbiting or thumbsucking deterrent is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. In order to avoid duplication in listing OTC nailbiting and thumbsucking active ingredients in more than one regulation and for ease in locating these ingredients in the CFR, the agency is listing all of these ingredients in a single regulation in 21 CFR 310.536 entitled "drug products containing active ingredients offered over-the-counter (OTC) for use as a

nailbiting or thumbsucking deterrent." Accordingly, § 310.545(a)(13) is being removed.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 39096 at 39098). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this final rule for OTC nailbiting and thumbsucking deterrent drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC nailbiting and thumbsucking deterrent drug products is not expected to pose such an impact on small businesses because only a limited number of products are affected. As noted above, the ingredient denatonium benzoate has already been removed from OTC nailbiting and thumbsucking deterrent drug products. The agency is only aware of several products that contain the ingredient sucrose octaacetate. The agency is aware of one product that contains the ingredient cayenne pepper as the listed active ingredient. Based on the limited number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.536 is added to subpart E to read as follows:

§ 310.536 Drug products containing active ingredients offered over-the-counter (OTC) for use as a nailbiting or thumbsucking deterrent.

(a) Denatonium benzoate and sucrose octaacetate have been present in OTC nailbiting and thumbsucking deterrent drug products. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these and any other ingredients (e.g., cayenne pepper) for OTC use as a nailbiting or thumbsucking deterrent. Based on evidence currently available, any OTC drug product containing ingredients offered for use as a nailbiting or thumbsucking deterrent cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, and promoted as a nailbiting or thumbsucking deterrent is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a nailbiting or thumbsucking deterrent is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After March 2, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

§ 310.545 [Amended]

3. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended by removing and reserving paragraph (a)(13).

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21371 Filed 9–1–93; 8:45 am]

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federal register

Thursday
September 2, 1993

Part VIII

Department of Education

34 CFR Part 232
Drug-Free Schools and Communities Emergency Grants Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 232

RIN 1810–AA66

Drug-Free Schools and Communities Emergency Grants Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Emergency Grants Program to add projects that combat drug and alcohol abuse by students in the most troubled areas of a local educational agency (LEA) to the list of the types of projects the Secretary may assist; to clarify eligibility requirements; and to ensure that applicants are able to demonstrate the basis of their eligibility to receive a grant.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Madeline Bosma, U.S. Department of Education, 400 Maryland Avenue SW., room 2123, FOB 6, Washington, DC 20202–6439. Telephone: (202) 401–1258. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 23, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Emergency Grants Program in the **Federal Register** (58 FR 15748–49).

Part 232 governs the administration of the Drug-Free Schools and Communities Emergency Grants Program. The changes to part 232 will: (1) Add to the list of the types of projects the Secretary may assist those projects that focus on combating drug and alcohol abuse by students in the most troubled areas of an LEA, and will provide examples of indices of those areas; (2) clarify the emergency grants eligibility requirements related to section 1006 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and (3) require that applicants include in their applications a statement of how they meet these eligibility requirements. These changes are needed to target program funds where they are most needed and to ensure that applicants understand and demonstrate their eligibility to receive an emergency grant.

In the preamble to the NPRM, the Secretary listed six factors to assist applicants for emergency grants in identifying the most troubled areas of an LEA. After considering public comment, the Secretary has incorporated these factors into § 232.5(e) of the regulations. Except for this change, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, three parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable authority—are not addressed.

Section 232.5 What Types of Projects May the Secretary Assist Under This Program?

Comment: One commenter suggested additional factors—lack of parental involvement (measured by attendance at parent teacher conferences and PTA meetings) and the presence of public housing near the target school—to assist applicants in identifying the most troubled areas of an LEA. Another commenter suggested that the proposed factors might not be applicable in all parts of the country, and that comprehensive services may be equally as critical in communities that are not densely populated metropolitan areas.

Discussion: Applicants are not required to use the six factors in the Secretary's list to identify the most troubled areas of an LEA. The factors are listed merely to provide assistance to applicants in identifying areas that may be troubled. The Secretary believes that parental involvement is an essential element of school improvement; however, the Secretary does not agree with the commenter that attendance at parent teacher conferences and PTA meetings is necessarily an accurate measure of parental involvement. The Secretary also does not agree that the mere presence of public housing near the target school necessarily warrants the conclusion that the area is "troubled." Instead, the Secretary believes that one of the factors already listed—overcrowded housing conditions—is a better general indicator. Because the list of factors is not mandatory, but intended as an example only, each LEA, whether urban, suburban, or rural, will be able to identify its own troubled areas using the factors in the Secretary's list or other factors applicable in the LEA's own area.

Changes: The list of factors contained in the preamble to the NPRM has been added to § 232.5(e) to assist applicants in identifying the most troubled areas of an LEA.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 232

Drug abuse, Drug-free schools and communities, Education department, Elementary and secondary education, Grant programs-education, Local educational agencies, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Number 84.233A Emergency Grants Program)

Dated: July 27, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 232 of title 34 of the Code of Federal Regulations as follows:

PART 232—DRUG-FREE SCHOOLS AND COMMUNITIES EMERGENCY GRANTS PROGRAM

1. The authority citation for part 232 continues to read as follows:

Authority: 20 U.S.C. 3216, unless otherwise noted.

2. Section 232.2 is revised to read as follows:

§ 232.2 What parties are eligible for a grant under this program?

A local educational agency is eligible to receive a grant if it—

(a)(1) Receives, or is eligible to receive, assistance under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2712); or

(2) Meets the criteria of clauses (i) and (ii) of section 1006(a)(1)(A) of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2712(a)(1)(A)(i) and (ii)); and

(b) Serves an area—

(1) In which there are a large number or a high percentage of—

(i) Arrests for, or while under the influence of, drugs or alcohol; or

(ii) Convictions of youth for drug- or alcohol-related crimes;

(2) In which there are a large number or a high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(3) That has a significant drug and alcohol abuse problem.

(Authority: 20 U.S.C. 3216)

3. Section 232.4 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by adding a new paragraph (a), and by revising the OMB control number following the section to read as follows:

§ 232.4 What must an application include?

* * * * *

(a) A statement of the basis for the applicant's eligibility under § 232.2(a)(1) or (2);

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0561)

(Authority: 20 U.S.C. 3216)

4. Section 232.5 is amended by removing the word "or" at the end of paragraph (c), by removing the period at the end of paragraph (d) and adding in its place "; or", and by adding a new paragraph (e) to read as follows:

§ 232.5 What types of projects may the Secretary assist under this program?

* * * * *

(e) Implement comprehensive programs to combat drug and alcohol abuse by students in the most troubled areas of a local educational agency, which may be characterized by factors such as—

(1) Open-air drug markets;

(2) High unemployment;

(3) High homicide rates;

(4) Overcrowded housing conditions;

(5) Boarded-up businesses and dwellings; or

(6) Limited access to basic goods, health and other social services.

[FR Doc. 93–21438 Filed 9–1–93; 8:45 am]

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